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CONVENTION,

(OF)

1947.

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The State University of New Jersey

NEW BRUNSWICK, NEW JERSEY.



Volume III

COMMITTEE ON RIGHTS,
PRIVILEGES, AMENDMENTS
AND MISCELLANEOUS PROVISIONS

and

COMMITTEE ON THE LEGISLATIVE
RECORD

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PREFACE

THIS VOLUME contains the proceedings before the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions and the Committee on the Legislative. In addition to the formal proceedings, there is included for each Committee an Appendix of all supplemental material submitted by individuals and groups, and not already set out in the text of the proceedings.

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions consisted of Robert Carey, Joseph A. Delaney, Leland F. Ferry, Ronald D. Glass, Mrs. Marie H. Katzenbach, Lawrence N. Park, John H. Pursel, Oliver Randolph, John F. Schenk, Francis A. Stanger, Jr. and Wesley Taylor. The first meeting of the Committee was held on Wednesday, June 18, 1947. John F. Schenk was elected Chairman, Robert Carey, Vice-Chairman and Lawrence N. Park, Secretary.

The Committee met on 13 different Convention days. All interested persons and groups were invited to present their views in person or to comment on the proposals before the Committee.

The minutes of this Committee are unlike those of the other Committees, in that they were first edited by the Chairman before being released. However, a careful check of the stenographic record indicates that no important changes were made in any of the substantive material. The minutes of the public hearings were reported in full, while those of the Committee meetings were summarized. No minutes were kept of the executive sessions, as they were closed.

The Committee on the Legislative consisted of Percy Camp, Dominic A. Cavicchia, Mrs. Myra C. Hacker, Christian J. Jorgensen, Wesley L. Lance, Leon Leonard, Arthur W. Lewis, John L. Morrissey, Edward J. O'Mara, Haydn Proctor and Mrs. Olive C. Sanford. The Committee first met on Wednesday, June 18, 1947, and organized. Senator Edward J. O'Mara was

elected Chairman, Senator Arthur W. Lewis was Vice-Chairman and Leon Leonard, Secretary.

The Committee met on 14 different Convention days. Invitations were sent to interested persons and groups to attend and notices were placed in the press, asking all who had anything to offer to the Committee in the form of comment, suggestion or criticism to meet with the Committee or to send it in.

The minutes of the Committee's public hearings are reported verbatim, the only editing being to correct grammar or to smooth out the continuity. In addition, through the courtesy of Chairman O'Mara, the minutes and conference notes of the executive sessions were made available for publication and they are included herein. These should help to make a more complete record of the work of this Committee.

The material in this volume will be indexed at the close of Volume V.

SIDNEY GOLDMANN
HERMAN CRYSTAL
Editors

February 1952

TABLE OF CONTENTS

VOLUME III

Preface	PAGE iii
---------------	-------------

PART I: COMMITTEE ON RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS

Organization meeting, June 18, 1947	1
Meeting, June 24, 1947 (morning session)	4
Meeting, June 24, 1947 (afternoon session)	7
Meeting, July 1, 1947 (morning session)	14
Meeting, July 1, 1947 (afternoon session)	17
Meeting, July 2, 1947 (morning session)	27
Meeting, July 2, 1947 (afternoon session)	34
Meeting, July 8, 1947 (morning session)	38
Meeting, July 8, 1947 (afternoon session)	40
Meeting, July 9, 1947 (morning session)	79
Meeting, July 9, 1947 (afternoon session)	119
Meeting, July 15, 1947 (morning session)	160
Meeting, July 15, 1947 (afternoon session)	163
Meeting, July 16, 1947 (morning session)	165
Meeting, July 16, 1947 (afternoon session)	172
Meeting, July 22, 1947 (morning session)	175
Meeting, July 22, 1947 (afternoon session)	183
Meeting, July 23, 1947 (morning session)	187
Meeting, July 23, 1947 (afternoon session)	194
Meeting, July 29, 1947 (morning session)	200
Meeting, July 29, 1947 (afternoon session)	203
Meeting, July 30, 1947	210
Meeting, August 5, 1947 (morning session)	212
Meeting, August 5, 1947 (afternoon session)	231

Appendix:

Report of the Commission on Revision of the New Jersey Constitution	275
Proposed Revised Constitution of 1944	284
Letter and Proposal of Allied Theatre Owners of New Jersey, Inc.	290
Letter of American Federation of Hosiery Workers, Branch 166 ..	291
Letter of American Legion, Department of New Jersey	292
Resolution of American Veterans of World War II, New Jersey State Department	294

	PAGE
Memorandum of John E. Bebout, Esq.	295
Letter of Purdy F. Benedict, Esq.	300
Letter of Rev. J. E. Bishop.	301
Letter of Rev. Theodore Woodrow Boltz.	303
Letter of Eugene Bouton, Esq.	305
Letter of Eugene Bouton, Esq.	310
Letter of Eric Brown, Esq.	311
Letter and Proposal of Kirk Brown, Esq. on Amendment and Revision of Constitution.	313
Proposal of Kirk Brown, Esq. on Labor Rights.	316
Memorandum of Judge Thomas Brown on the Preamble to the Constitution.	317
Letter of Alberto Collins, Esq.	322
Proposals of Communist Party of New Jersey.	323
Letter of Consumers League of New Jersey.	325
Memorandum of Joseph L. Bustard, Division Against Discrimi- nation, New Jersey Department of Education.	329
Resolution of Essex County Colored Republican Council, Inc. .	331
Resolution of Essex County Council of Churches.	333
Letter of Hon. Albert W. Hawkes.	334
Statement of Hon. Robert C. Hendrickson.	335
Resolution of Jewish War Veterans of the United States, De- partment of New Jersey.	342
Memorandum of Joint Committee on Constitutional Bill of Rights.	343
Final Draft of Proposed Amendments to New Jersey Bill of Rights Presented by Joint Committee on Constitutional Bill of Rights.	355
Recommendations of League of Women Voters.	356
Statement of League of Women Voters of New Jersey on Amend- ment and Revision of the Constitution.	362
Statement of League of Women Voters of New Jersey on Con- servation.	364
Letter of League of Women Voters of New Jersey on Veterans' Civil Service Preference.	365
Proposals by The Lord's Day Alliance of the United States. . . .	367
Letter of Douglas H. MacNeil, Esq.	370
Proposals of New Jersey State Conference of the National Asso- ciation for the Advancement of Colored People.	373
Memorandum of National Conference of Christians and Jews, New Jersey Region.	374
Proposals of New Jersey American Youth for Democracy.	375
Proposals of New Jersey Committee for Constitutional Revision	376
Draft Proposals and Statement of Committee on Research and	

	PAGE
Drafting of the New Jersey Committee for Constitutional Revision	377
Proposals of New Jersey Council of Churches.....	384
Brief of New Jersey Council, State County and Municipal Workers	386
Statement by New Jersey Education Association.....	393
Joint Statement of the Farm Bureau and the New Jersey State Grange	395
Memorandum of New Jersey Farm Bureau and New Jersey State Grange Relating to Amendments.....	401
Letter of New Jersey Federation of Women's Clubs.....	404
Letter of Nutley Chapter, New Jersey Independent Citizens League	406
Letter of New Jersey Manufacturers Association.....	408
Letter of New Jersey Manufacturers Association.....	410
Recommendations of New Jersey State Bar Association Committee on the Status of Women.....	412
Letter of New Jersey State Council, Congress of Industrial Organizations	414
Letter of New Jersey State Farmers Union Council.....	415
Telegram of New Jersey State Federated Egg Producers Cooperative Association, Inc.....	416
Proposal and Resolution of New Jersey State Federation of Business and Professional Women's Clubs, Inc., for an "Equal Rights" Provision	418
Resolution of New Jersey State Federation of Business and Professional Women's Clubs.....	420
Resolution of New Jersey State Federation of Colored Women's Clubs	421
Recommendations of New Jersey State Federation of Labor....	423
Letter of New Jersey State Federation of Teachers.....	426
Proposal of New Jersey State Federation of Teachers.....	427
Letter of New Jersey State Firemen's Mutual Benevolent Association	428
Statement of New Jersey State Industrial Union Council, C.I.O., with respect to Amendment and Revision of the Constitution	429
Proposal of New Jersey Taxpayers Association on Public Records	434
Statement of New Jersey Women's Government Study Council ..	435
Letter of Organized Women Legislators of New Jersey	438
Letter of Arthur N. Pierson, Esq.....	439
Proposal of Presbytery of Morris and Orange.....	440
Letter of Herbert Quittner, Esq.....	441
Memorandum of J. B. R. Smith on Rights and Privileges.....	442
Memorandum of J. B. R. Smith on The Right of Suffrage.....	445
Statement of Rev. Frank Bateman Stanger.....	448

	PAGE
Proposal of State Council Against Discrimination	451
Letter of State Federation of District Boards of Education of New Jersey	452
Letter of United Office and Professional Workers of America C.I.O.	453
Resolution of Urban Colored Population Commission	454
Resolution of Veterans of Foreign Wars of the United States . . .	456
Letter of William Sumner Lewis Post No. 222	458
Letter of George Wilson, Esq.	460
Letter and Memorandum of Women's Alliance For Equal Status	462
Anti-Discrimination Proposals of Citizens	465
The New Jersey School-Bus Case	466

PART II: COMMITTEE ON THE LEGISLATIVE

Meeting, June 18, 1947 (executive session)	471
Meeting, June 24, 1947 (executive session)	480
Meeting, June 25, 1947 (executive session)	485
Meeting, July 1, 1947 (executive session)	490
Meeting, July 2, 1947 (morning session)	499
Meeting, July 2, 1947 (afternoon session)	550
Meeting, July 8, 1947 (morning session)	588
Meeting, July 8, 1947 (afternoon session)	614
Meeting, July 8, 1947 (executive session, afternoon)	641
Meeting, July 15, 1947 (executive session)	645
Meeting, July 16, 1947 (executive session)	650
Meeting, July 21, 1947 (executive session)	656
Meeting, July 22, 1947 (executive session)	660
Meeting, July 28, 1947 (morning session)	661
Meeting, July 28, 1947 (afternoon session)	712
Meeting, July 29, 1947 (executive session)	763
Meeting, July 30, 1947 (executive session)	768
Meeting, July 31, 1947 (executive session)	770

Appendix:

Report of Commission on Revision of the New Jersey Consti- tution	773
Proposed Revised Constitution of 1944	784
Resolution of Allied Theatre Owners of New Jersey, Inc.	792
Memorandum of James W. Arrowsmith on the Initiative, Ref- erendum and Recall	794
Resolution of Association of Chosen Freeholders of New Jersey	800
Resolution of Atlantic City Ministerial Union	802
Letter of Scott Bagby, Esq.	804
Letter of A. Thornton Bishop, Esq.	806
Letter of Kirk Brown, Esq.	807

	PAGE
Letter of Robert Carey, Esq.	809
Resolution of Bergen County Chapter, Catholic War Veterans, Inc.	813
Resolution of Conception Post No. 1188, Catholic War Veterans	815
Letter of New Jersey State Department of Catholic War Vet- erans, Inc.	816
Letter of Sgt. Joseph J. Sadowski, C. M. H., Post No. 492, Cath- olic War Veterans, Inc.	818
Letter of Essex County Council of Churches.	819
Evans and Miller: "The Historical Infirmities in Our State Constitution"	820
Statement of Federation of New Jersey Theatres.	844
Hudson County Republican Committee Proposal on Bingo ...	845
Hudson County Republican Committee Proposal on Gambling Clause	846
Resolution of Hudson County Republican Committee.	848
Recommendations of League of Women Voters of New Jersey.	849
Letter from Men of Trinity, Methodist Church.	855
Letter and Resolution of Township of Millburn.	857
Planning and Development Proposals of Montclair Planning Board	860
Letter of Montclair Town Planning Board.	864
New Jersey Committee for Constitutional Revision Proposal on Local Government	866
Recommendations of New Jersey Committee for Constitutional Revision	872
Statement of New Jersey Conference of the Methodist Church. .	874
Letter of New Jersey Conference of the Methodist Church, Bridgeton District	878
Resolution of Executive Committee of the New Jersey Council of Churches	879
Letter and Proposals of New Jersey Federation of Official Plan- ning Boards	880
Views of The New Jersey State Chamber of Commerce.	883
Resolution of New Jersey State Elks Association.	884
Recommendations of New Jersey State Federation of Labor ...	885
Constitutional Changes Recommended by New Jersey State In- dustrial Union Council, CIO.	888
Letter of New Jersey State League of Municipalities.	889
Memorandum of New Jersey Taxpayers Association.	891
Letter of Thomas D. Taggart, Jr., Esq.	893

COMMITTEE
ON
RIGHTS, PRIVILEGES,
AMENDMENTS
AND MISCELLANEOUS
PROVISIONS

RECORD
OF
PROCEEDINGS

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, June 18, 1947¹

(The session began at 3:30 P. M.)

The first meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman stated that there had been some discussion that, in addition to having a recording secretary, a member of the Committee assist in recording the proceedings of the Committee. The Chairman further stated that he would like to ask Mr. Lawrence N. Park to act as Secretary, if he had the authority so to name him and if agreeable to the rest of the Committee. Mr. Carey seconded the suggested selection of Mr. Park. In the absence of any other nominations, Mr. Park was designated as Secretary of the Committee.

The Chairman then stated the next matter for discussion was the committee agenda, including the question of a date for its next meeting. He pointed out that everyone had received the volume in which the 1844 Constitution is compared with the 1942 Hendrickson report. He further stated that the 1944 proposed Constitution was also available, but not in the same volume, and suggested that each member of the Committee, in the absence of a staff to help make a cross-comparison of the 1844 Constitution, the 1942 proposals, and the 1944 Constitution as prepared by the Legislature, do so personally. He suggested that everyone be prepared to enter into a general discussion at the next meeting on the material in these three drafts and that the Committee would doubtless proceed with further business from that point. All committee members were asked for advice on this suggestion.

A general discussion by various members of the Committee followed on this suggestion and certain questions to be decided on at future meetings. The Chairman's suggestion was favorably received.

¹ These minutes were prepared by the Secretary of the Committee.

Mr. Park noted that the question of the Preamble and its draftsmanship would come up for consideration.

Mr. Ferry inquired as to whether Article IV, Section VII, paragraph 2 of the present Constitution was to be considered by the Committee. The Chairman replied that he thought not, as it was not referred to the Committee in Rule 15.

Mr. Park further noted that some of the questions to be discussed were: lunacy; habeas corpus—who shall have the power and who can suspend the writ of habeas corpus; libel—Article I, paragraph 5; jury trial by men.

It was pointed out that the question of suffrage was under the jurisdiction of the Committee and that all of the provisions of the new Constitution should be made to apply to male and female alike.

Another committee member inquired as to under whose jurisdiction “labor” came. He observed that “discrimination” would come under the Committee’s jurisdiction.

Mr. Ferry inquired as to what should be done about the various communications being received, who was to answer them and who was to set a date for hearings, and whether the Secretary should take care of these communications. After a general discussion, Mr. Carey moved that the Chairman and the Secretary be constituted a committee of two to provide a method of answering all general correspondence that was coming in from groups who desire hearings and desire certain things done, to the end that they could all be specifically advised on such matters. He observed that if their problems belong to the Committee, it was the intent of his motion that the interested parties could be notified as to when and where they could be heard. He further stated that it was his intention that this sub-committee was to have the power to arrange for hearings, inasmuch as that power should be vested in a sub-committee of two, namely the Chairman and the Secretary, in order to expedite matters.

Mr. Carey accepted an amendment to his motion, namely, that the sub-committee consult with the other standing committees, that it secure proper accommodations for hearings and keep in touch with the President of the Convention, Dr. Clothier.

The motion, as amended, was duly seconded and carried.

The Chairman stated that the Secretary and the Chairman would carry out the instructions of the motion and report back at the next meeting on the result of the sub-committee’s efforts.

The Chairman again suggested that each committee member get the background material that had been prepared by next Tuesday so that each member would be ready to enter into further discussion. He stated that as a result of Mr. Carey’s motion the Chairman and the Secretary would have the task of determining the method of answering the general correspondence and developing a method of

getting the hearings under way, including the arrangement of dates. He further suggested that next Tuesday, after the receipt of the subcommittee's report, the Committee should proceed to set up its schedule of hearings.

The Chairman asked if there was any other business to bring before the Committee and again stated that between the time of adjournment and the next meeting it was his earnest recommendation that all committee members examine carefully the 1844 Constitution and the various proposals for changing it, with special reference to the basic work of the Committee assigned to it under Rule 15. He urged each committee member to be prepared to discuss the provisions and proposals generally at the next meeting.

On motion duly made, seconded and carried, the meeting adjourned at 4:30 P. M., to reconvene immediately following the Tuesday, June 24, 1947 general session of the Convention.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, June 24, 1947¹

(Morning session)

(The session began at 11:00 A. M.)

The second meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman stated that the first order of business would be to correct the minutes of the previous meeting. He further stated that at the request of the Chair, each committee member had received a rough draft of the minutes of the previous meeting; also, that when he had received his copy he felt there were certain needed corrections to make a true record, so he had sent every member of the Committee a suggested corrected copy.

Mr. Carey moved that the correction of all minutes be left to the Chairman, which action was seconded by Mr. Delaney and carried.

The Chairman reported that in accordance with a motion of the previous meeting, he communicated with Dr. Clothier and proceeded to read the communication relative to a hearing schedule.

Mr. Ferry moved that the procedure, insofar as communications are concerned, be that they be referred to the Chairman and Secretary for reply to the various organizations that have written to the Committee. The motion was seconded by Mr. Stanger and carried.

Mr. Stanger read a proposed form of the Preamble which he had prepared. After extended discussion on whether the form of the Preamble should be changed or remain in its present form, Mr. Pursel stated that he was inclined to agree that the Committee be slow to change the Preamble. He then moved that Mr. Stanger write up his proposed change of the Preamble and distribute copies to the members of the Committee for study and discussion. The motion was seconded by Mr. Park and carried.

¹ These minutes were prepared by the Secretary of the Committee.

The Chairman stated that Article I, paragraph 1, was the same in the 1844 Constitution, in the 1942 Hendrickson report, and the 1944 draft by the Legislature.

Mr. Stanger suggested that the words "and women" be inserted after the word "men" in Article I, paragraph 1, Rights and Privileges.

The Chairman read Article I, paragraph 2, noting no change with the two proposed drafts.

As to paragraph 2, Mr. Stanger stated that the Heckel report¹ mentioned that some people advocate that "initiative, referendum and recall" be inserted in this paragraph.

The Chairman stated that paragraph 3 was the same in the drafts of 1942 and 1944 as in the Constitution of 1844.

Mr. Stanger stated that in the Heckel report it was suggested that in paragraph 3 the word "privilege" be changed to the word "right," so that it will read, "No person shall be deprived of the inestimable *right* of worshipping Almighty God * * *."

The Chairman read paragraph 4, noting no change in the two proposed drafts.

There was informal discussion on the need of keeping the Constitution as brief as possible, following the pattern of the Federal Constitution.

Mr. Park then stated that no person should be disqualified because of the fact that he does not have any particular religious belief. He suggested that the following be added to Article I, paragraph 4: "No person shall be rendered incompetent to be a witness because of his opinion on matters of religious belief."

After discussion, Mr. Stanger stated that it had been suggested that Jim Crowism, discrimination and anti-Semitism be outlawed. After discussion, it was decided that this matter would be considered later.

The Chairman read paragraph 5, stating there was no difference in the three drafts.

Mr. Delaney discussed the words, "law and the fact" in paragraph 5.

The Chairman read paragraph 6, noting that the 1844 Constitution and the two proposed drafts were the same. He inquired as to whether the definition of the word "houses" should be broadened.

Mr. Park suggested that the following addition be included in paragraph 6: "No evidence obtained by any officer in the violation of this provision shall be admitted in evidence against the accused in the trial of a criminal case."

Mrs. Katzenbach offered a recommendation discussed in the Heckel report, that in the last clause of paragraph 6, the words

¹ See monograph, "The Bill of Rights," by C. Willard Heckel, in Volume II.

"persons and things" be inserted instead of "papers and things."

Mr. Ferry again brought up the matter of broadening the word "houses." Mr. Park said that his recollection was that a man's own dwelling house is a haven of refuge and it did not include a business.

Mr. Randolph stated that unless some addition is made to paragraph 6, as has been suggested, the paragraph now has practically no effect on the criminal practice in New Jersey.

The Chairman stated, as to paragraph 7, that the 1844 Constitution contained the words "six men"; the 1942 Hendrickson draft contained the words "six persons," and the 1944 draft contained the words "six men."

Mr. Ferry suggested that the Constitution contain a provision that it should be construed to include men and women whenever the word men was mentioned.

Going back to paragraph 3, Mrs. Katzenbach suggested that the matter of transportation to and from schools of other than public school pupils, such as parochial school pupils, may come up for discussion.

It was regularly moved, seconded and carried that the meeting recess until 2:00 P. M.

(The Committee recessed at 12:45 P.M. for luncheon)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, June 24, 1947¹

(Afternoon session)

(The session began at 2:00 P. M.)

PRESENT: Carey, Delaney, Ferry, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman reported that the Convention Hall had been reserved for the afternoon of July 8, 1947 and the entire day of July 9, 1947, for public hearings on material within the Committee's jurisdiction as set forth under Rule 15 of the Convention.

There was discussion as to how many public hearings should be held during the week of July 7, and whether people should be invited to the hearings by particular invitation or by general invitation. Mr. Randolph pointed out that most people who come to a hearing will come with a prepared statement.

Mr. Park moved that, through the action of the Chairman and Secretary, public announcement be made that this Committee will hear any persons interested in discussing questions of alteration in the Preamble, Article II dealing with Suffrage, Article III dealing with Distribution of the Powers of Government, and Article VIII dealing with General Provisions, following the Convention recess on Tuesday, July 1, 1947, at 1:00 P. M., and through the day as necessary; that hearings on Article IX, Amendments, will be held on Wednesday, July 2, 1947 at 10:00 A. M. and 1:30 P. M.; and that hearings on Article I, Rights and Privileges, will be held on Tuesday, July 8, 1947, at 1:30 P. M., and Wednesday, July 9, 1947, at 10:00 A. M. and 1:30 P. M., in the Convention Hall, and thereafter as necessity shall require. The motion was seconded by Mr. Stanger and carried.

Mr. Randolph pointed out that Reverend Hardge of Jersey City, President of the New Jersey National Association for the Advancement of Colored People, would, no doubt, desire to appear before the Committee.

¹ These minutes were prepared by the Secretary of the Committee.

It was pointed out that over 30 organizations had already written to the Committee requesting a hearing.

Mr. Stanger moved that the Chairman of the Committee extend invitations to persons named by the Committee, to appear before the Committee on Tuesday, July 8, 1947, to discuss Article I of the Bill of Rights of the Constitution. The motion was seconded by Mrs. Katzenbach and adopted.

There was discussion as to whether gambling came within the purview of this Committee. It was pointed out by the Chairman that technically it is under Article IV, Section VII, paragraph 2, which Article had been referred to the Legislative Committee. The Chairman announced that he would ask Dr. Clothier for his views on the matter.

The Chairman then asked for names of individuals to be invited to the hearings. Various names were submitted by the several committee members, and it was suggested that in writing these individuals, they be requested to transmit suggestions in writing if they cannot, or prefer not to attend the hearings.

Paragraph 7 was again discussed, and Mr. Stanger suggested that the word "men" be changed to "jurors"—namely, "six jurors."

Mr. Park recommended that following the words "six men," or as altered, there be placed a comma, and the following inserted: "and the Legislature may authorize a trial of mental competency without a jury." The purpose, he said, was to remedy the difficulties made apparent by the litigation in *In re McLaughlin*, 87 N. J. Eq. 138, 102 Atl. 439. There followed discussion about mental incompetency.

Mr. Ferry stated that a trial by jury is more likely to bring a just decision as to a person's mental competency than one man hearing the case. In his opinion, a person's whole estate could be disposed of by the decision of one person if this change was made.

Mr. Carey suggested the following for consideration: Under paragraph 7, trial by jury in all civil cases may be waived.

The Chairman read paragraph 8 as it appeared in the three drafts and then asked for suggestions.

Mr. Park suggested that following the word "defense," in Article I, paragraph 8, there be inserted the following provision, "nor shall any person be compelled, in any criminal case, to be a witness against himself." Mr. Park cited the following cases: *Palko v Connecticut*, and *Twining v New Jersey*.

Mr. Randolph recommended that in paragraph 8, following the last word "defense," there be added the words "from the time of his arrest."

There was discussion on this matter and Mr. Carey pointed out that the matter of counsel for a man can be fixed by legislation.

The Chairman stated that this matter would be brought up for further consideration at a later date.

The Chairman read paragraph 9 as it appeared in the 1844 Constitution, and noted that in the 1944 draft the words "justices of the peace" appeared, whereas in the 1942 Hendrickson report they had been deleted.

Mr. Taylor stated that in 1844 the words "answer for a criminal offense" were used, but in the 1942 Hendrickson report, the words "capital or other infamous crime" were used, and he inquired as to the difference between the two phrases. Mr. Stanger stated that a breach of the peace is a criminal offense.

As to paragraph 10 of Article I, the Chairman stated that the 1942 and 1944 drafts carried the same language as the 1844 Constitution.

Paragraph 11 was next discussed, the Chairman noting no difference in the three drafts.

Mr. Park stated that in his opinion the Committee should explore and arrive at a decision whether clarification should be made in the language relative to power to suspend the writ of habeas corpus. He further stated that, fortunately, this provision has not heretofore, to his knowledge, been invoked except during the Civil War. The matter became very important when the question came up of whether President Lincoln had the power of suspension, or whether the power was vested in Congress. Mr. Park continued that it might be well to leave the paragraph as it is, but on the other hand, investigation might show that it should be subject to much discussion in view of the probability of future wars developing with great alacrity and quickly causing very extended destruction. The question, he said, was of greater importance today than our history has heretofore demonstrated.

The Chairman stated that the matter would be given further study.

The Chairman stated that the language of paragraph 12 was the same in all three drafts and was a time-tested principle of merit.

The Chairman stated that the language of paragraph 13 was the same in all three drafts. There appeared to be general agreement on its retention as now drawn.

The Chairman read paragraph 14, noting that it was the same in the three drafts.

Mr. Stanger inquired as to whether overthrow of the government or advocacy of same by force could not be considered treason. Mr. Pursel stated that Ambassador Biddle, in testifying before the Un-American Activities Committee, had stated all of his ancestors in the American Civil War favored overthrowing the government. The Chairman replied that he thought Mr. Stanger meant that he wanted Communists and like believers to work within the existing constitu-

tional framework for change by legal, constitutional means, and further stated that this matter would be considered at a later date.

The Chairman stated that the language of paragraph 15 was the same in all three drafts. The paragraph was reviewed briefly.

The Chairman stated that as to paragraph 16, the 1944 draft was the same as the 1844 Constitution, but in the 1942 Hendrickson report it was suggested that possession of land could be taken by any agency or subdivision of the State before payment, but not by any individual or private corporation.

Mr. Park recommended that the language in paragraph 16 after the semicolon be eliminated. He further stated that Mr. Pursel knew more about this matter than he, and asked him for details in the case of *Clemens v Bridge Commission*.

Mr. Pursel said:

"*Clemens v Bridge Commission* concerned the new bridge we were building in Philadelphia. We bought some 43 properties—residential and factories, vacated roads and got rid of public utilities. In the meantime, the Commission was dealing with bonding companies for financing purposes. The engineers were drawing plans, and we had to have the land when they got ready to build, and we paid very high prices because that got around. Later, we had litigation when some of the owners of houses along where we built a high embankment claimed that their light and air had been cut off, and they brought a *mandamus* suit to compel us to pay damages. It was found that there was damage, and we appealed the case through the New Jersey courts and then finally to the United States Supreme Court. Attorney-General Schnaeder of Pennsylvania was associated. The Supreme Court of the United States decided we had a right, on our land, to build what we wanted to, and even if these properties had been damaged, they should not be compensated. When you build these big bridges you must make engineering plans, and you can't say, for instance, that this little building is worth \$2,000 and estimate \$2,000 more for having light and air cut off. It is too vague; it is just a risk a landowner must take—and if someone builds a big building you are cut off. Of course, if a property owner does not want to risk having his light and air cut off he can buy a larger tract. So it seems to me, if you are given compensation for light and air, that you made it impossible to estimate what these public improvements would cost and no one could guess at it."

There was some discussion on this matter and the Chairman stated that when the Committee holds hearings it would doubtless receive some vigorous expressions of opinion on both sides. He further stated that the file indicated that there were people who desired to appear and be heard on both sides of the question. The Chairman read Article IV, Section VII, paragraph 8 in the old Con-

stitution which states: "Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners," and noted that it was in the Legislative Section of the 1844 Constitution, but in the 1942 report was cross-compared with Article I, paragraph 16 of that report.

Mr. Pursel said it was his understanding that the State Highway Department had the right to take possession of land first and pay afterwards, and the Delaware River Joint Toll Bridge Commission had just been given the right by legislation passed within the last two weeks, by Pennsylvania and New Jersey.

Mr. Park called the Committee's attention to *New Jersey Statutes Annotated*, section 20:1-29.

The Chairman stated that the language of paragraph 17 was the same in all three drafts. It was discussed briefly.

The Chairman stated that the language of paragraph 18 was the same in all three drafts. It was discussed briefly.

The Chairman said that paragraphs 19 and 20 were taken away from this Committee and given to another Committee.

Paragraph 21 was next discussed, and Mr. Park proposed that this clause be retained in whatever order is necessary in the proposed revision, and that the language remain the same under a new number in our draft.

The Chairman noted that a new paragraph was proposed in 1942 relative to citizens or taxpayers restraining violation of the Constitution.

The Chairman then inquired as to whether Articles II, III and VIII should be considered at this time or tomorrow, and it was decided by the various members to finish the discussion today.

Article II, Right of Suffrage, was next discussed, after it had been read by the Chairman.

Mr. Stanger suggested that the word "male" before the word "citizen" should be eliminated.

The Chairman stated that he thought the sense of the 1942 Hendrickson report was the same as the 1944 draft. The 1944 draft, he further stated, also picks up the thought that one should be a duly registered voter, and that this was a matter to be considered.

Mr. Stanger pointed out that consideration should be given to deleting the word "pauper" in Article II.

Mr. Stanger pointed out the suggestion made by a recent Assembly Concurrent Resolution was that "any absentee qualified voter may vote."

The Chairman suggested that the matter of absentee voting for civilians as well as the military would be considered at a later date.

Discussion was held pertaining to the age limit of voters. There

were several expressions of opinion on the desirability of keeping the voting age at 21 years.

Mr. Carey suggested that the matter of the Suffrage Article be taken up with the Attorney-General of the State, particularly the question as to what the effect would be if there was a re-adoption of the 1875 amendment to our present State Constitution in view of the fact that part of paragraph 1 related to the exclusion from the voting privilege of a certain class of those convicted of crime. He further stated that if it is the desire to exclude any persons who have been convicted of a specified crime, all of whom have the right to testify in law today as witnesses, it would have to be defined as to what crimes exclude a man from voting.

Mr. Stanger suggested that the Attorney-General be invited to a hearing before this Committee to present his views.

The Chairman stated that the 1942 Hendrickson draft had additional suggestions under Right of Suffrage, and added that they probably represented transfers from another Section. He stated they related to the time of holding elections, who is to be elected at general elections and when and how questions shall be submitted.

Mr. Carey suggested that Mr. Randolph might have something to say on the question of a clause being placed in the Bill of Rights on the subject matter of discrimination and related matters.

Mr. Randolph stated that a great many suggestions had been received to the effect that a clause be included, as in the present 1938 New York Constitution.

The Chairman said that this matter would be taken up in due course.

Article III, Distribution of the Powers of Government, was next discussed. It was pointed out that this Article III provides for three distinct departments: the Legislative, Executive, and Judicial.

There was discussion about delegation of power and Mr. Park stated that the functions of the State Constitution are merely to limit and distribute power. The State Constitution is not the source of power; the source of power is in the people.

Article VIII, General Provisions, was next discussed. The Chairman stated that Section I of the 1844 Constitution was dropped out in the 1942 and 1944 drafts. Mr. Park proposed that Section I of Article VIII of the 1844 Constitution be eliminated.

The Chairman said he thought the intent was to transfer those duties to some designated official, other than the Secretary of State, who would assist the Legislature in the examinations.

Section II, pertaining to the seal of the State, was next discussed. This Section was carried through in all three drafts. It was unanimously passed as is, with the reservation of future consideration if needed.

Section III was next discussed and Mr. Stanger proposed that the two thoughts in said Section be divided into two separate Sections. This proposal appeared to be favorably received by the Committee and is to be considered later.

Section IV was next brought up for consideration by the Chairman. He pointed out that he thought this matter should not be discussed at this time, as it probably would be referred to some other Committee.

Mr. Park suggested that the question of Amendments was so involved that it be considered at a later date.

On motion duly made, seconded and carried, the meeting adjourned until Tuesday, July 1, 1947, at 1:00 P. M.

(The session adjourned at 5:45 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 1, 1947¹

(Morning session)

(The session began at 11:00 A. M.)

The third meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The minutes of the meeting of June 18 were approved as submitted.

Mrs. Katzenbach suggested that immediately the minutes of the Committee are approved, that a copy be sent to Mr. Goldmann² for the permanent record. The Chairman stated that two copies of the minutes of the meeting of June 18 as approved by the Committee were ready for Mr. Goldmann and would be transmitted to him.

The Chairman then reported that all letters received by members, either as individual delegates or as members of the Committee, had been answered by him and a hearing schedule enclosed. He further stated that the hearing schedule of the Committee was sent to all daily newspapers in New Jersey in order that the public would be informed as to the specific days they could appear before the Committee for hearings. He stated that the first hearing was scheduled for 1:00 P. M., July 1, 1947.

The Chairman then stated that Article IX, Amendments, was the next scheduled order of business.

Mr. Park moved that as people were waiting to be heard, that they be heard at this time. The motion was seconded by Mr. Taylor and carried.

Mrs. Harold W. Corlett of New Brunswick, New Jersey:

Mrs. Corlett stated that she was a member of the New Brunswick League of Women Voters, but at this time was representing the State League of Women Voters.

¹ These minutes were prepared by the Secretary of the Committee.

² Convention Archivist and Librarian.

Mrs. Corlett read a statement¹ relative to the conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the State, which statement recommended that a paragraph pertaining to this matter be included in the Constitution.

The foregoing statement was classed under Miscellaneous Provisions, and it was suggested that 15 copies be made available to the Committee for consideration at a later date.

Mrs. Katzenbach then referred to Section 10 of the New York Constitution, a part of which reads as follows: "nor shall witnesses be unreasonably detained." She further cited a case where girls were held in the Mount Holly jail and unreasonably detained, as they were later found not guilty. There was extended discussion on this matter.

Mrs. Katzenbach then referred to Article I, paragraph 11, and suggested that after the word "unless" in the 1844 Constitution, the word "when" be inserted, and after the word "require" the words "its suspension" be inserted.

Mr. Carey stated that several women want a declaration in the Bill of Rights to establish clearly that women should have all the rights given men, and he suggested to Mrs. Katzenbach that all women delegates of the Constitutional Convention meet with the Committee at their earliest convenience to present their views on this matter. Mrs. Katzenbach stated that there has been no interpretation in the United States Constitution of the word "women," but stated that she would have more information later and then suggest further action.

The Chairman suggested that Article IX, Amendments, be considered at this time.

Mr. Glass stated that there seemed to be a difference of opinion among the delegates to the Convention on the method of amendment, one group saying that the present method of amendment should be kept, while the other group would like to make the method more flexible and ease the amending process.

The Chairman suggested that the Committee examine the present amending process of the 1844 Constitution and the pertinent parts of the 1942 Hendrickson report and the 1944 legislative effort. He thereafter read excerpts from Article IX, Amendments, and made a cross-comparison of the first Section of Article IX with the other two efforts.

There was extended discussion by the various committee members as to whether an amendment should be submitted at a general election or a special election, and whether a suggested amendment should have been agreed to previously by one or two Legislatures.

¹The statement appears in the Appendix to these Committee Proceedings.

Mr. Pursel was of the opinion that the people should have the right to amend freely and that passage by one Legislature was enough.

Mr. Carey stated that he thought the Constitution should not be made too easy to change, but an amendment should be submitted at a general election because the public takes no interest in special elections.

Mr. Glass pointed out that almost a million dollars would be saved if amendments were voted upon at a general election. There was further extended discussion on the subject.

The Chairman read the remainder of Article IX of the 1844 Constitution, which states that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment or amendments should be resubmitted to the people by the Legislature oftener than once in five years if defeated. He further stated that this language was the same in the 1942 and 1944 drafts.

There was discussion on the submission of an amendment within the five-year period. Mr. Randolph pointed out that the idea of the five-year period is that once the people have spoken, there should be some limitations.

It was regularly moved, seconded and carried that the meeting recess until 1:00 o'clock P. M.

(The Committee recessed at 12:00 noon for luncheon)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 1, 1947¹

(Afternoon session)

(The session began at 1:00 P. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman called the hearing to order and stated that the following was the schedule of the July 1, 1947 hearing:

Location—Room 5, Music Building

Subject Matter:

Preamble

Article II: Right of Suffrage

Article III: Distribution of Powers of Government

Article VIII: General Provisions

The Chairman stated that he had advised Senator O'Mara, Chairman of the Legislative Committee, that it was the feeling of the Committee that the so-called gambling amendment, which is in Article IV of the present Constitution, comes under his Legislative Committee for hearing. He stated further that a hearing on this subject matter, along with other subject matter coming under the Legislative Committee, would be held on Wednesday, July 2.

The Chairman then inquired if anyone present desired to be heard on the subject matter scheduled for July 1.

Mrs. W. B. Heinz, representing the League of Women Voters of New Jersey, came forward at this time and stated that each delegate had, no doubt, received a copy of the constitutional changes recommended by the League of Women Voters of New Jersey.² She further stated that she wished to speak regarding the provisions for election and suffrage.

Mrs. Heinz read the following:

"General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen in odd-numbered years at a general election."

¹ These minutes were prepared by the Secretary of the Committee.

² Excerpts of the League's brochure, "Constitutional Changes," containing its recommendations relative to the several subjects referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, appear in the Appendix to these Committee Proceedings.

Mrs. Heinz said that the important part of this particular proposal was that elections be held in odd-numbered years, and the League of Women Voters proposed that the Governor be elected for four years, Senators for four years, and Assemblymen for two years. She continued with the fact that if said elections were held in odd-numbered years, it would thus eliminate conflict with national elections.

The Chairman then asked if there were any questions.

As there were no queries from the members of the Committee, Mrs. Heinz suggested the elimination of the word "male" throughout the Constitution.

Mrs. Heinz said that another proposal was that the voting age be lowered to 18, stating that one of the primary efforts of the New Jersey schools is to prepare young people to be intelligent and interested citizens. She further stated that young people leave high school quite interested in the whole process of government and are faced with a situation where for a period of years there is no opportunity for them to take an active part, and by the time they attain the age of 21 years interest has gone.

Another proposal, Mrs. Heinz stated, was that the voting requirement of five months' residence in the county be removed. This recommendation was made, she said, in view of the fact that today people move across county lines almost without realizing it, and by so doing life-long residents of New Jersey forfeit their votes in important state and national elections. Mrs. Heinz further stated that there was also another situation which seems to the League of Women Voters to affect this: that under the present Election Law, *Revised Statutes, Title 19, Chapter 4, Article I, paragraph 2*, it is provided that a newcomer to the State or a newly naturalized citizen is permitted to cast his vote at the primary election with a residence of only seven months in the State and overnight in the county and voting district. Mrs. Heinz said that this situation is not compatible with our present provisions, and that it would seem to the League of Women Voters better to omit the county residence provision and leave that to legislation.

She further suggested that the words "in the election of" all officers be substituted for "for" all officers, and stated that this change is recommended in order that the Legislature may, if it chooses, provide by law for the use of the proportional representation method of voting in certain elections.

The next recommendation by the League was that no idiot or insane person shall enjoy the right of an elector. She stated that the word "pauper" should be deleted.

The fourth item presented by the League of Women Voters was the same as the wording of the 1944 legislative draft, Article VIII,

paragraph 5, which states, "Persons may be deprived by law of the right of suffrage because of conviction of crime." This wording is proposed by the League as a substitute in an effort to define crime, and it would be up to the Legislature to decide what constitutes a crime for the purpose of suffrage.

Mrs. Heinz further stated that persons in certain institutions are included in this Section, because at present a problem exists in governmental units where such persons constitute a considerable body of voters, and that they do not lose their right to vote because of their confinement to said institution.

The next item presented by Mrs. Heinz was the same as the wording of the 1944 draft, Article VIII, paragraph 8, with the addition of a provision for "absentee voting" for those not in the service of the State or the United States, and it was also proposed that such provisions be made for those in the civil service. Mrs. Heinz continued that the League also proposed that it should be possible for the Legislature to set up means for other citizens to vote who are not in the State at the time of election.

There was some discussion at this time concerning the lowering of the age of voters to 18.

Mr. Glass stated that the statutes require that the schools teach problems in American democracy, and give instruction in civics and the rights of citizenship.

Mrs. Heinz stated that if young people knew that at that age they were immediately going to have the opportunity to vote, it would put some pressure on the schools for preparing them to vote.

Mr. Ferry inquired if Mrs. Heinz knew of any state that permitted voting at the age of 18, and Mrs. Heinz stated that, to her knowledge, Georgia was the only State, and this provision was adopted in its new constitution of 1945.

There was extended discussion relative to crime and juvenile delinquency and at what age it was most prevalent, and the readiness of young people to vote at the age of 18.

Mr. Carey stated that no one can make a contract under 21 years of age and the reason for this is that they are not deemed ready to assume the burden of an adult life.

At this point Mrs. Heinz was excused, there being no further questions.

Mr. Stanger suggested that the discussion be closed on the subject of youth voting except that the two young men present be asked to present their views. The Chairman then invited these men to state their views on this matter.

Mr. Donald C. Blackburn, of Ridgewood, New Jersey, then stated as follows:

"I was in the armed forces for 35 months and at that time I felt

that I didn't know the views on both sides of the picture. I was more or less prejudiced by the manner in which my people had voted. The greater percentage of those in the Army under 21 did not impress me as being sufficiently mature to assume responsibilities of voting. I feel that 18 is slightly too young. I am 24 and I am just beginning to realize myself that I am mature enough to vote. The election of the delegates was the first time I voted."

Mr. F. R. Boucher, of Upper Montclair, New Jersey, then presented his views as follows:

"I feel that at 18 the average person has graduated from high school and he is going to work or college. If he works, he has to make his own living and he is taking on economic responsibilities and I feel he should have political responsibilities at the same time. I feel that the college student has enough intelligence to vote. I feel that 18 is the proper age to vote. We were drafted at 18 and we were able to volunteer a little earlier if we wanted to. I think a person at that age could show proper responsibility, and sometimes older folks do not know how they are voting. I would say that 18 is a proper age to vote. I am 24, too."

Mr. Glass at this time pointed out that while the boys were in the service they were away from the source of information and didn't have the available press that the average citizen had. He said that some New Jersey boys who were with him in Italy at that time felt they were incompetent to vote because they didn't have the sources of information.

Mr. Blackburn then stated that, if he recalled correctly, there was also a presidential election and there were sufficient publications available at that time, and the fellows always had the opportunity to read newspapers and there were also numerous magazines. He said that even so, they were just as unenlightened as they were on the State Constitution.

Mr. Delaney then stated that if a boy commits a criminal offense under the law, he is a juvenile and tried in the Juvenile Court, and, therefore, if you are allowing an individual to vote at 18, you are allowing a juvenile to vote.

There was some discussion as to whether juvenile means up to or including 18 years of age.

The Chairman then inquired if there were any other individuals who desired to be heard.

Mr. Richard P. McCormick, of New Brunswick, New Jersey, stated as follow:

"I was charged with preparing a monograph on the subject of suffrage and elections,¹ and in the course of the study I arrived at

¹ Mr. McCormick's monograph, "Suffrage and the Constitution," appears in Volume II.

certain conclusions. There are just two or three points that I would like to present.

"First of all, the point regarding 'paupers.' It seems to me that term has no place in this Constitution. It has been supplemented in *Title 44* by the use of the term 'poor persons.' Moreover, the term is subject to certain abuses. When there are a great many people on relief, such as W.P.A. workers of the past, that could be used to deprive them of the right of suffrage. I would recommend that the term be not included.

"Secondly, on this question of idiots and insane persons, it seems rather obvious that we should exclude these people from voting. Under the present registration set-up, there is no way of determining whether a person is an idiot or an insane person. A person in an institution does not acquire a residence and, therefore, cannot vote.

"The third point is this extremely difficult matter relating to criminals. They wrestled with that in 1942 and 1944 and in no instance were they able to arrive at a satisfactory means for determining what class of criminal should be excluded."

Mr. Pursel inquired of Mr. McCormick as to excluding people who commit murder, arson, burglary, rape, etc. Mr. McCormick said that he was not a lawyer, but understood that it is difficult to determine this matter and that it would require some legislation or judicial interpretation.

Mr. Park then stated that a brief had been submitted stating that persons may be deprived by law of the right of suffrage because of conviction of crime, and asked Mr. McCormick for his opinion.

Mr. McCormick stated that this was a terminology which throws the matter into the lap of the Legislature and he said he was inclined to trust them.

Mr. Carey stated that infamous crimes have to be determined by the Legislature.

Mr. McCormick discussed a system under which a county official is supposed to report to the board of elections regarding a person who has been convicted of an offense.

Mr. Stanger inquired if Mr. McCormick thought a man convicted of any crime should be deprived of the right to vote. Mr. McCormick said it has been held that such disfranchisement is not done as a punishment but rather to avoid abuses in elections.

Mr. Stanger further inquired whether, if a man in the heat of temper committed a murder and was convicted, would it be any more desirable to have him disfranchised than one bribing a public official? Mr. McCormick noted that there is a special provision in the Constitution regarding bribing an official.

Mr. Stanger inquired further whether if a man did not exercise

his right to vote for a certain number of elections, should he be disfranchised—is that person less of a citizen than a murderer? Mr. McCormick said that he had not given any thought to that, but that he would make it penal.

Mrs. Katzenbach inquired as to the social rehabilitation of a criminal—a man or woman who is released from jail and is not permitted to vote when he or she goes to the polls.

Mr. McCormick stated that the matter which he wished to call to the attention of the Committee was the proper wording of this clause in the Constitution.

Mr. Stanger stated that if you read the 1776 Constitution, you can understand the use of the word “pauper.” Mr. McCormick replied that in those days poor houses were flourishing institutions and a man in charge of a poor house could tell the paupers how to vote, so that was the reason for the use then of the word “paupers.”

Mr. Randolph inquired if Mr. McCormick felt there was any difference between a W.P.A. director leading W.P.A. workers out to vote and the situation in colonial times. Mr. McCormick replied he saw no basic difference.

Mr. Carey at this time stated that Mr. McCormick’s views on “pauper” and “crimes” were the same as his.

Mr. Park concurred with Mr. McCormick that the word “pauper” should be stricken out.

Mr. Park inquired if Mr. McCormick had given any thought to the matter of residence after a matter of time, and if Mr. McCormick had come upon any evidence of evil existing because of the one-year rule. Mr. McCormick stated that we do not have Assembly districts and that every state has the one-year rule with variations. He further said the purpose of a voting requirement is just one thing—to prevent fraud and abuses—and that the time limit does not have to be very long but there should be some time limit. He stated that the time limit could be shortened and still eliminate fraud.

The Chairman asked Mr. McCormick if he had anything further to say. Mr. McCormick stated that although he was a member of the faculty of Rutgers University, that what he said at this hearing were his own views and not those of the University.

The Chairman then inquired if anyone else desired to be heard.

Mr. Park at this time moved that the Committee formally thank Mr. McCormick for his assistance. Mr. Stanger said he thought that the motion should be amended to include the two young men, Mr. Blackburn and Mr. Boucher. The amended motion was seconded by Mrs. Katzenbach and adopted.

The Chairman then asked if anyone desired to appear regarding the Preamble and the Article on Distribution of the Powers of Gov-

ernment. As no one desired to be heard, it was regularly moved, seconded and carried that the Committee go into executive session.

Mr. Park moved that the Preamble to the new Constitution be identical to that of the Preamble in the 1844 Constitution. The motion was seconded by Mr. Taylor.

The Chairman stated that everyone had a copy of Mr. Stanger's proposal for a new Preamble. Mr. Stanger's proposal for minor changes in the Preamble was reviewed by the Committee and Mr. Stanger stated that he had no dissent to the motion if the Committee unanimously agreed to the old Preamble as is.

Mr. Pursel stated that he thought the Preamble should be left alone—or use Mr. Stanger's proposal. Mr. Park at this time withdrew his motion.

Mr. Ferry stated that he would like to move that the proposal of Mr. Stanger's Preamble be approved with the exception that the word "the" be inserted before the word "civil." Mr. Park seconded the motion.

Mr. Taylor stated that he was in favor of not changing the Preamble.

The Chairman then stated that if words are deleted or added, it might mean one thing to the Committee and something else to the various other delegates when the matter comes up for discussion on the floor, depending on each delegate's definition of such words as "prosperity and happiness."

After extended discussion, *pro* and *con*, it was felt that any changes that were not necessary to improve the Preamble should not be made, in order to avoid difficulties. There was informal discussion as to leaving the Preamble as is, and it was the consensus that it remain the same.

The Chairman interjected that a brief had just been referred to him by Governor Driscoll, written by Mr. Brown and addressed to Dr. Clothier under date of June 26, 1947. The Chairman proceeded to read from Mr. Brown's brief pertaining to the Preamble. It was decided that Mr. Brown's proposed Preamble was, in effect, the same as the Preamble in the 1844 Constitution.¹

Mr. Ferry at this point withdrew his motion. Mr. Park withdrew his second to the motion.

Mr. Park then moved that the Committee recommend that the Preamble of the proposed Constitution be adopted in the identical form of the Constitution of 1844. The motion was seconded by Mr. Carey and unanimously carried.

Mr. Park suggested that Article III be considered next, as it is short.

¹The memorandum of Judge Thomas Brown appears in the Appendix to these Committee Proceedings.

The Chairman stated that Article III, Distribution of the Powers of Government, was one short paragraph in the 1844 Constitution, and was the same in the 1944 legislative draft, but in the 1942 draft it was three paragraphs long.

Mr. Park moved the Committee recommend that in place of Article III, paragraph 1, that the provisions as set forth in the 1944 proposed revision under the heading of Article II, paragraph 1, be used.

The Chairman then proceeded to read the 1944 draft and inquired of Mr. Park why he made the foregoing motion.

Mr. Park stated his reason for the motion was this: that the 1944 proposed draft incorporated the language of what has been the actual fact for years—with the growth of administrative law it was found that it is impossible, not only under the Constitution but under the statutes, to have complete separation of the three powers of government. There is such a tremendous overlapping, Mr. Park stated, that the proposed change, while small in the amount of language, actually recognizes what goes on in this State, to wit, that the powers are distributed among branches. He thought that the language of the 1944 proposal was more in line with what has actually taken place. Mr. Park stated he thought that it properly modernizes the language.

Mr. Carey stated that the paragraph (Article III, paragraph 1) was 103 years of age and every word had been passed on in a long line of decisions, and in view of this, why should it be changed since what it meant was now clear in everyone's mind?

Mr. Stanger stated that there are "departments" in various branches and he thought that "branches" was a better word.

Mr. Delaney at this point seconded Mr. Park's motion.

Mr. Carey stated that he moved that said motion be amended to adopt the Article the same as it is in the 1844 Constitution. The suggested amendment was lost.

On roll call, Mr. Park's motion was adopted by the following vote:

AYES: Delaney, Glass, Katzenbach, Park, Randolph, Stanger, Taylor—7

NAYS: Carey, Ferry, Pursel, Schenk—4

Mr. Park suggested that the vote be retaken by each committee member raising his hand, which was done.

The Chairman stated that in the Hendrickson report there were additional sections, and he proceeded to read them. It was the sense of the Committee that it did not at this time care to recommend any additional provisions under Article III. He then asked if there were any other questions under the Article of Distribution of the Powers of Government.

Mr. Stanger moved that the Committee proceed to take up Article

VIII, General Provisions. The motion was seconded and carried.

The Chairman stated that the first provision was that the Secretary of State shall be ex-officio an auditor of the accounts of the Treasurer, and further stated that in recent proposed drafts it had been suggested that this be deleted.

Mr. Stanger moved that said provision be deleted in the new Constitution. Mr. Park seconded the motion, which was carried.

The Chairman then read the second paragraph, dealing with the seal of the State of New Jersey, and stated that the language was the same in all three drafts.

Mr. Delaney moved that this paragraph be so continued, which motion was seconded by Mr. Ferry and carried.

The Chairman stated that paragraph 3 was the one which Mr. Stanger had suggested be divided into two separate thoughts.

Mr. Stanger moved the adoption of said paragraph down to and including the word "greeting," making this part a separate paragraph.

There was extended discussion as to whether the words "Secretary of State" should be eliminated, the Chairman pointing out that in the 1944 draft they were eliminated.

Mrs. Katzenbach seconded Mr. Stanger's motion and the Chairman asked if there were any further remarks.

Mr. Park moved to amend the previous motion and to substitute for the words "and countersigned by the Secretary of the State," the provision that "countersignature shall be by such person as designated by law."

Mr. Pursel seconded the motion and on roll call the motion was lost by the following vote:

AYES: Glass, Park, Pursel, Schenk—4

NAYS: Carey, Delaney, Ferry, Katzenbach, Randolph, Stanger—6

NOT VOTING: Taylor—1

Mr. Stanger asked for the question on the original motion. On roll call, the motion was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Pursel, Randolph, Schenck, Stanger, Taylor—10

NAYS: Park—1

The Chairman then read the second part of paragraph 3.

Mr. Stanger moved that this second part be adopted as a separate paragraph, which motion was seconded by Mrs. Katzenbach and carried.

The Chairman read paragraph 4 and it was decided that this matter be left open.

Mr. Park moved that the Committee examine the Schedule of the Constitution of 1844 to determine whether there is anything therein contained that the Committee should report on to the Convention,

as each Committee must prepare a Schedule for the subject matter referred to said Committee.

The Chairman pointed out that each Committee will report on the parts of the Schedule that refer to the work of that Committee only.

Mr. Park moved to submit a resolution that the sense of the Committee is that the content of Article X, paragraphs 1 to 12, inclusive, of the 1844 Constitution, do not call for recommendations by the Committee, and that the Chairman consult with the President of the Convention to ascertain his views on the subject. This motion was seconded by Mr. Delaney.

Mr. Carey stated that he objected to the negative wording of Mr. Park's motion.

The Chairman then asked if there were any further remarks and, as there were none, the resolution was adopted by unanimous vote.

The Chairman stated that under General Provisions, the 1942 Hendrickson report and the 1944 legislative draft had a general clause providing that the Legislature shall pass certain laws of an enabling nature.

There was discussion regarding the hearing scheduled for Wednesday, July 2, 1947, and the Chairman reported that he had received informal requests from a few people who desired to be heard.

There being no further business to come before the Committee, it was regularly moved, seconded and carried, that the meeting be adjourned until Wednesday, July 2, 1947, at 10:00 A.M.

(The meeting adjourned at 4:00 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 2, 1947¹

(Morning session)

(The session began at 10:30 A.M.)

PRESENT: Carey, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The fourth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

The Chairman stated that at this time a hearing was scheduled on Article IX, Amendments, of the present Constitution, and inquired if anyone present desired to be heard.

Mrs. Arthur C. Gillette, of the League of Women Voters of New Jersey, appeared and proceeded to read a brief² which advocated that amendments require approval by one Legislature only and by a majority vote only. The League recommended submission of amendments to the voters at a general election because special elections are an unnecessary expense, and also recommended the removal of the present prohibition against amendments being submitted more than once in five years. The League also recommended that the question of holding a Constitutional Convention shall be passed on every 20 years by the voters, but the Legislature was to have the right, in addition, to provide for submission of the question at any general election.

Informal discussion followed regarding whether or not the Constitution should be difficult to change and whether the five-year limit before resubmitting a defeated amendment on the same matter should be shortened.

There was discussion as to the point in Mrs. Gillette's brief of having the question submitted to the people on a ballot every 20 years, asking whether the people wanted a general revision of the Constitution by a convention.

¹ These minutes were prepared by the Secretary of the Committee.

² Mrs. Gillette's statement appears in the Appendix to these Committee Proceedings.

Mrs. Katzenbach remarked that 26 years after the 1844 Constitution was adopted, there was agitation for revision in the Constitution.

Mr. Carey pointed out that the Legislature is elected by the people regularly. If every amendment proposed to the Legislature were submitted for a vote, there would be voting on amendments every year. He further stated the Convention had to prepare a document that would last for many more years than 20 years.

Mrs. Gillette stated that the League thought that the amending process should be eased, and that of the 23 amendments that had been submitted to the people over a period of years, 19 were defeated.

The Committee thanked Mrs. Gillette for her recommendations and suggestions, after which she was excused, there being no further questions.

The Chairman then inquired if anyone else desired to be heard.

Mr. Winston Paul, a delegate to the Constitutional Convention, was the next to appear before the Committee.

Mr. Paul stated that he had given much thought and study over many years to the amending process and that he had drafted a proposal on a method of amendment. He thought that this matter was one of the most important things that the Committee had to deal with. He further stated that the present Constitution is unsatisfactory and inadequate, being so difficult to amend, in his opinion, that amendment is practically prohibited. He stated that a happy medium should be arrived at.

Mr. Paul proceeded to read the first paragraph of his brief¹ and said he felt that two consecutive sessions of the Legislature should not have to pass on an amendment and that the special election section should be eliminated. He further stated that after the Constitution is prepared there might be something left out and a proper amending process would correct such a situation.

Mr. Paul's proposal was that if an amendment be adopted by a majority of the members of each House, the proposed amendment shall be presented to the Governor. If the Governor approves the amendment, or if he fails to take any action on it within 15 days, the amendment shall be submitted to the people. If the Governor disapproves, the amendment shall not be submitted to the people unless the Legislature shall repass it by a three-fifths vote of all the members of each of the Houses.

Mr. Stanger inquired if Mr. Paul had made any provision for advertising so that the public would be informed, and Mr. Paul replied that he thought that was something the Legislative Committee had to do.

¹ Mr. Paul's proposal appears in the Appendix to these Committee Proceedings.

There was informal discussion on the merits of a majority vote of each House, or a two-thirds or three-fifths vote of each House on an amendment, before presenting the same to the Governor.

The Chairman asked if there were any further questions of Mr. Paul. Mr. Ferry stated that in his opinion Mr. Paul's proposal eliminated three safety valves, namely: (1) that it go through two Legislatures, (2) that it be submitted at a special election, and (3) that it be submitted not more frequently than once in a five-year period.

The Chairman inquired if there were any more questions. There being none, Mr. Paul stated that he would now like to speak on the periodic referendum on revision.

Mr. Paul pointed out what he felt were the merits of submitting to the people, every 20 years, the question of whether they desired a constitutional convention, to propose a revision of or amendments to the Constitution. He stated that in the event this question is voted down, the will and the wishes of the majority of the people will and should prevail.

In conclusion, Mr. Paul stated that he would like to summarize why he felt these two suggestions that he had presented are important, both to the Committee and the Convention: "These two suggestions are endorsed by the League of Women Voters, New Jersey Committee on Constitutional Revision, the American Federation of Labor, Congress of Industrial Organizations, Real Estate Board of the State and various other state organizations. These two proposals are very much desired by the labor organizations. They would be very pleased to go along in the November election, if they felt that they were not going to be eternally tied to that for another 103 years. If there is no chance for a periodic referendum on revision, they will feel that the door is barred to them, for the usual changes they anticipated may be needed. Therefore, if we fail to adequately change the amending clause and to have the periodic referendum on revision, we are presented with the opposition of the same groups that defeated the 1944 draft."

The Chairman asked Mr. Paul if there were any other comments, and after informal discussion by the Committee on the two suggestions, Mr. Paul stated that he did not desire to make it too easy to amend the Constitution if the people did not want it, but that there should be a happy medium.

The Committee thanked Mr. Paul for his recommendations and suggestions, after which he was excused, there being no further questions.

The Chairman then asked if anyone present desired to be heard at this time, and Irving Leuchter, of Isserman, Isserman & Kapelsohn, 24 Commerce Street, Newark, New Jersey, attorneys for the

State C. I. O., appeared stating he was appearing on behalf of the New Jersey Committee for Constitutional Revision and the New Jersey State C. I. O.

Mr. Leuchter stated in effect as follows:¹ "We must leave any Constitution free so that it may be changed with changing conditions, without waiting 100 years. I will say an important factor in the defeat of the proposed Constitution of 1944 was precisely the failure to include a provision to enable the Constitution to be easily revised. The decision of the State C. I. O. to oppose the adoption of the 1944 draft was a hard decision to make. The controlling factor in the decision in 1944 of the C. I. O. to oppose the Constitution rested upon the absence of a flexible simple, amendatory clause. That statement is made on behalf of the State C. I. O. Briefly, I would like to point out the three major defects in the present Constitution:

1. The requirement that any proposed amendment be passed by two consecutive Legislatures.
2. The Committee and the State C.I.O. is strongly of the opinion that the requirement that an amendment be submitted to the people at a special election is improper. We think that it should be submitted as a special proposal at a general election. It guarantees a bi-partisan approach on the amendment. We are quite convinced that no matter what legislation is adopted for the submission to the people of amendments, politicians will have their say on the amendment and we would not have it otherwise. We reject the argument that it is necessary to eliminate politics by putting it up at a special election. It will poll a greater vote at a general election. A secondary factor of importance is cost. All these elections cost a great deal of money—special election about \$700,000.
3. The third defect is the five-year limitation. We see no reason why a measure, once defeated, should not be brought up in a reasonably short length of time. Many times a meritorious amendment is defeated because it has not been sufficiently explained, and we feel there should be no limitation upon the time."

Mr. Stanger then inquired of Mr. Leuchter if he would oppose a three-year limitation, to which Mr. Leuchter replied that he certainly would, but was not, at this time, prepared to make a statement on a two-year limitation.

Mr. Leuchter continued as follows: "I would be very definitely in favor of a one-year proposal. Two years would be open to

¹The complete statement of the New Jersey State Industrial Union Council, C.I.O., dated July 3, 1947, appears in the Appendix to these Committee Proceedings.

question.”

Mr. Leuchter then stated he wished to express the following proposals which he thought were the proper method:

1. We think that at any time a session of the Legislature adopts an amendment to submit to the people, then it may be and should be submitted. We do not see why more than one session of the Legislature should pass on it.
2. We think that owing to the peculiar historical development of the Legislature in New Jersey, in any case where one House has passed a proposed amendment and the other House disapproves, then the Governor should have the right, on his own initiative, to present it to the people for voting. This proposal is a general one on the part of the C.I.O. and applies not only to proposed amendments but applies to general legislation. This suggestion of a proposed constitutional amendment method is a proposal which is adopted by the New Jersey Committee for Constitutional Revision and the State C.I.O.”

At this time, Mr. Paul interjected and said that Mr. Leuchter was not speaking for the Committee on Constitutional Revision, as the Committee proposed revision as submitted by him previously.

Mr. Leuchter replied that he had been informed this morning that it was the opinion of the Committee on Constitutional Revision; evidently he was misinformed, but that this opinion was the position of the State C.I.O.

Mr. Park inquired of Mr. Leuchter if the C.I.O. objected to Mr. Paul's proposal, and Mr. Leuchter stated that the C.I.O. would like to see it as he mentioned above.

Mr. Leuchter continued, in effect, as follows: “We think that it must be provided that there be some method of having a periodic submission to the people of a general revision of the Constitution, plus a proposal of adoption for particular amendments. These are our two points. I do not say that we would necessarily oppose a Constitution that did not carry both, but we want both and we think so very strongly. If the Constitution which emerges is otherwise acceptable, and the lack of a proper amending proposal is not included, we would not object too much.”

There was an inquiry at this time as to who makes the decisions on the recommendations which Mr. Leuchter was presenting at this time, and had the members of the organization passed on them?

Mr. Leuchter replied that the State C.I.O. Council is composed of delegates elected from the various local trade unions, which represent a very large and substantial body of workers in New Jersey, and that decisions are arrived at by the Executive Committee of the C.I.O.

Mr. Leuchter stated there was one other proposal which he desired to present definitely on behalf of the State C.I.O. and not on behalf of the Committee on Constitutional Revision. The proposal is as follows:

“We think the people themselves should have the right to initiate amendments to the proposed Constitution by signing a petition. We think that in any case where 100,000 citizens have signed a petition endorsing a specific amendment to the Constitution, and if the 100,000 signatures are so distributed throughout the various counties in the State, then the amendment has received sufficient support to be submitted to the people as a whole at the next general election.”

An inquiry was made of Mr. Leuchter as to how many members belonged to the C.I.O. Mr. Leuchter replied that there were about 300,000 members, and further stated that the members are citizens of this State and he wanted to assure the Committee that they exercise their own political judgment.

Mr. Leuchter then stated that this completed his statement, whereupon the Chairman inquired if there were any further questions.

There was some discussion regarding the mechanical difficulties involved in presenting a petition of the kind suggested.

Mr. Leuchter then cited three points:

1. The first and most important point in his opinion being the timing of the petition with relation to the time when it would be submitted.
2. It would be desirable, although not necessary, to provide that some proportion of the 100,000 signatures, say 10,000, be secured a greater length of time in advance and filed with the Secretary of State, and within a limited time after that, additional signatures must be secured.
3. Most of these things, however, should, in his opinion, be dealt with by legislation—with respect to these mechanical matters.

Mr. Park inquired if the Executive Committee of the C.I.O. had prepared a draft pertaining to this matter. Mr. Leuchter replied that he would see that the Committee received a draft, together with copies of his brief.¹ In conclusion, he stated that if the balance of the Constitution were entirely acceptable, the fact that it did not have a good amending clause did not, in his opinion, mean that the State C.I.O. would oppose the adoption of the Constitution. He further stated that if the Constitution indicates that it can properly be amended by the people when necessary, and be subject to periodic referendum on revision, then the State C.I.O. could

¹This material appears in the Appendix to these Committee Proceedings (see preceding footnote).

still approve it.

The Committee thanked Mr. Leuchter for his recommendations and suggestions, after which he was excused.

The Chairman then asked if anyone else desired to be heard on the Amendments Article.

Mr. James W. Arrowsmith, of Somerville, New Jersey, appeared and discussed a draft of state constitutional provisions embodying the initiative, referendum and the recall, leaving briefs supporting his position, together with sample voting ballots.¹

Former Assemblyman S. S. Swackhamer, who accompanied Mr. Arrowsmith, spoke to the Committee briefly, saying that he had enjoyed very much the hearing today on Amendments.

The Committee thanked Messrs. Arrowsmith and Swackhamer for appearing at the hearing.

On motion duly made, seconded and carried, the Committee recessed until 1:30 P.M.

(The Committee recessed at 12:35 P.M. for luncheon)

¹Mr. Arrowsmith's proposals appear in the Appendix to the Proceedings of the Committee on the Legislative.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 2, 1947¹

(Afternoon session)

(The session began at 2:00 P. M.)

PRESENT: Carey, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman announced that the hearings would be continued at this time and inquired if anyone desired to be heard on Article IX, Amendments.

There being no one present who desired to be heard, the Chairman announced that various Proposals introduced on the floor were beginning to flow back to the respective Committees, and stated that the following Proposals had been referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions for study:²

No. 6, by Mr. Camp, referring to overthrow of the government by force.

No. 7, by Mrs. Peterson, referring to initiative and referendum.

No. 8, by Mr. Glass, referring to no discrimination because of race, color or religion.

No. 9, by Mr. Stanger, referring to no establishment of one particular religious sect and no loss of civil rights because of religious or racial belief.

No. 11, by Mr. Glass, referring to preventing impairment of benefits payable by any state retirement fund.

No. 13, by Mrs. Peterson referring to rights and privileges to be granted to public employees under tenure.

The Chairman inquired if the Committee desired that these Proposals be kept in the committee file until each subject was considered and reviewed, and it was unanimously agreed that the Proposals be filed at the present time.

The Chairman announced that a number of people had replied

¹ These minutes were prepared by the Secretary of the Committee.

² The full text of these Proposals appears in Volume II.

to the letters he had written and stated they desired to be heard next week, among them:

- New Jersey Civil Service Association
- Communist Party
- Urban Colored Population Commission of New Jersey
- State Board of Education
- William Cope, of Drake College
- New Jersey State Commanders Conference on Constitutional Convention
- William Dickey, Jr., representing the New Jersey Taxpayers Committee (July 9)
- League of Women Voters (July 8)
- C.I.O. (Mr. Holderman)
- A few individuals.

Mrs. Bucknum, vice-chairman of the Committee on Legislation of the State Federation of Women's Clubs, appeared at this time and made a brief statement to the effect that the Constitution should be a framework or a pattern of broad principles and should not particularize or encroach on the power of the Legislature. She was then excused.

The Chairman then asked the Committee what it desired to do next, as no other people apparently desired to be heard on Article IX, Amendments.

Mr. Park made a motion that the Committee go into executive session to discuss the tentative draft of the amending clause, which motion was seconded by Mr. Taylor and carried.

Mr. Park then moved that in order to expedite the work of the Committee and with the thought that certain of the proposals will have almost unanimous approval, the Committee now consider and express its sentiments on the question whether the voting for new amendments shall be at a special or general election. This motion was seconded by Mr. Pursel and adopted.

After informal discussion, Mr. Taylor moved that there be incorporated into the Article concerning Amendments to be recommended to the Convention that the voting for new amendments be at a general and not a special election. The motion was seconded by Mr. Randolph and carried.

Mr. Park then moved that the Committee consider the problem of whether or not any limitations should be placed upon the period after which the same amendment might be submitted to the people and, if so, what limits should be placed. The motion was seconded by Mr. Pursel and carried.

Mr. Carey moved that as regards this matter the same phraseology be used in the new Constitution as in the 1844 Constitution. The motion was seconded by Mr. Pursel, after which there was

some discussion.

Mr. Stanger at this time called for the question on the motion and a show of hands. The following vote was recorded:

AYES: Carey, Pursel, Randolph, Schenk—4

NAYS: Ferry, Glass, Katzenbach, Park, Stanger, Taylor—6

The motion was therefore declared lost.

Mr. Ferry then made a motion that the limitation upon the period after which the same amendment may be submitted to the people be three years instead of five years. The motion was seconded by Mr. Taylor.

There was informal discussion pertaining to this matter, after which Mr. Stanger called for the question on the motion with a show of hands, and the following vote was recorded:

AYES: Ferry, Glass, Katzenbach, Pursel, Taylor—5

NAYS: Carey, Park, Randolph, Schenk, Stanger—5

The motion was therefore declared lost.

Mr. Stanger moved that there must be a lapse of one general election before an amendment can be placed on the ballot again. The motion was seconded by Mr. Glass and the following vote recorded by a showing of hands:

AYES: Glass, Katzenbach, Park, Stanger, Taylor—5

NAYS: Carey, Ferry, Pursel, Randolph, Schenk—5

The motion was therefore declared lost.

Mr. Stanger then asked for a re-vote on the three-year limitation period during which the same amendment may be submitted to the people. The motion was seconded by Mr. Taylor and carried by the following vote:

AYES: Ferry, Glass, Katzenbach, Pursel, Stanger, Taylor—6

NAYS: Carey, Park, Randolph, Schenk—4

Mr. Carey at this time stated that he reserved the right to object to the three-year limitation period before the Convention and stated that he might at that time bring in a minority report.

Mr. Park moved that the Committee next consider the question of whether or not submissions may be made by the people through the initiative process of amending the Constitution. The motion was seconded by Mr. Stanger and carried.

Mr. Ferry read a section of a monograph wherein 13 states had adopted this method, after which there was some discussion on this matter.

Mr. Glass then moved that amendments to the Constitution of the State of New Jersey be initiated through the Legislature only.

The motion was seconded by Mr. Ferry and adopted by the following vote:

AYES: Carey, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger—9

NAYS: Taylor—1

Mr. Park then moved that the Committee now consider by what process, with what provisions, and by what vote the Legislature shall initiate proposed amendments. The motion was seconded by Mr. Glass and carried.

The Chairman stated that there was now open for discussion the matter of whether we should require two sessions of the Legislature to pass on an amendment and what the vote percentage should be before an amendment is submitted to the people.

Mrs. Katzenbach moved that the Committee adopt the proposal submitted by Mr. Winston Paul, with the exception that an amendment require a three-fifths vote in both Houses before being transmitted to the Governor, and if he disapproves said amendment, a two-thirds vote be required in both Houses thereafter, rather than a majority vote at first and a three-fifths vote later, as proposed by Mr. Paul.

The motion was seconded by Mr. Glass and adopted by the following vote:

AYES: Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—9

NAYS: None

NOT VOTING: Carey—1

After discussion about how the public should be informed of a proposed amendment, Mr. Stanger moved that before any amendment is submitted to the people, it be printed in full in at least one newspaper in each of the counties of the State of New Jersey at least three months before the people go to the polls to vote. The motion was seconded by Mr. Pursel and carried.

The next matter discussed was whether there should be a provision in the Constitution that a vote be taken every 20 years on the matter of general revision.

Mr. Stanger moved that no such provision be included in the Constitution. The motion was seconded by Mr. Pursel and adopted by the following vote:

AYES: Carey, Ferry, Glass, Katzenbach, Pursel, Randolph, Schenk, Stanger, Taylor—9

NAYS: None

NOT VOTING: Park—1

On motion made, seconded and carried, the meeting adjourned until Tuesday, July 8, 1947 at 1:30 P. M.

(The session adjourned at 4:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 8, 1947

(Morning session)

(The session began at 11:00 A. M.)

The fifth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The minutes of the meeting of June 24 were approved as submitted.

The Chairman distributed various briefs to the committee members for study which had been received by him from individuals and organizations.

Miss May M. Lyons, of West Orange, New Jersey, representing the Legal Status of Women Committee of the New Jersey Bar Association, appeared at this time together with Miss Mary Philbrook, of Tenafly, New Jersey. Miss Lyons proceeded to read a recommendation adopted by the New Jersey State Bar Association proposing that a clause be placed in the new Constitution which will embody the principle that no distinction shall be created between the rights of men and women to vote, to hold office, or to enjoy equally all civil, political, religious and economic rights and privileges, and urged its adoption as necessary to clarify and establish the legal status of women.¹

Miss Lyons stated that the State Bar has been working on this problem for the last eight years and had taken favorable action on the principle some time ago. She urged that the Committee embody the same principle in a clause in the Constitution.

The Chairman asked the committee members if there were any questions. There was some discussion as to whether women actually lack rights that men have, and Miss Lyons pointed out that the rights women have are not by virtue of the Constitution, and there-

¹This recommendation appears in the Appendix to these Committee Proceedings.

upon cited various instances in the present Constitution wherein only men are referred to.

At this time Mr. Carey suggested that the women delegates of the Convention get together and present their views to the Committee on this matter.

Mr. Ferry suggested that in the event an equal rights provision is proposed, a clause should be inserted in the Constitution as follows: "Women shall likewise be subject to all the obligations of the law affecting men, except where otherwise especially provided by legislation."

Miss Philbrook interjected at this time, stating that the United Nations is studying this question of the status of women and that a sub-committee is working on the Bill of Rights.

There was some discussion on whether labor laws should apply to men and women alike.

Mr. Stanger suggested a clause as follows: "Women shall have the right to vote, to hold office, and to enjoy all civil, political, religious and economic rights and privileges." There was a discussion as to the meaning of the word "economic."

Mr. Carey stated that he thought women in New Jersey have identical rights with men today, but there is a "cloud on their title," and Mr. Stanger remarked that it is a legislative right.

Mr. Delaney inquired as to the question of support, after which there was informal discussion on this matter.

Mr. Carey then submitted a clause as follows: "Nothing herein shall take from women any other rights they may have by virtue of the legislation of this State."

Miss Philbrook stated that she thought the present wording of the Bill of Rights was excellent except that the word "men" be changed to "persons."

Mr. Stanger suggested that the ladies resubmit to the Committee their recommendations after they review the discussion of the morning.

Miss Lyons stated that there are 300 women's clubs in this State to which the proposals have been made, and that several women's clubs endorsed the report submitted by her.

Mr. Ferry suggested a clause as follows: "Whenever the word 'men' is used in this Constitution, it shall be construed to mean 'women' also," but that we keep the present wording of the Constitution except as modified.

The Committee thanked the women for appearing, after which they were excused.

It was regularly moved, seconded and carried that the meeting adjourn until 1:30 P. M.

(The Committee adjourned at 12:30 P. M. for luncheon)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 8, 1947

(Afternoon session)

(The session began at 1:30 P. M.)

The fifth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions reconvened at 1:30 P. M. in the Convention Hall, Rutgers University Gymnasium, New Brunswick, New Jersey.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

CHAIRMAN JOHN F. SCHENK: This is a public hearing of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions and we will take testimony and hear interested people on Article I, Rights and Privileges. At this time, I wish to call on Mrs. Frank Fobert. Mrs. Fobert is appearing for the League of Women Voters.

MRS. FRANK FOBERT: Mr. Schenk and members of the Committee:

The League of Women Voters of New Jersey feels that Article I, Rights and Privileges, is the strongest part of the 1844 Constitution. We suggest only two changes and three additions. These were submitted to you, members of the Committee, in printed form, before the Convention opened, in a book with a gray cover.¹ We wish to amplify today only on numbers 2 and 3, on pages 1 and 2, respectively, and I have extra copies of these. I'll hand them around just in case you don't have your book here.

The 1844 Constitution added a number of paragraphs to the Bill of Rights not contained in the 1776 Constitution. These were not new rights; the Convention added the practice and customs of the preceding years, writing them in in explicit terms. So we urge two additions which are not new but which have grown out of the practice of our preceding years. The first, number 2, page 1, reads:

¹ These excerpts from the League of Women Voter's "Constitutional Changes" appear in the Appendix to these Committee Proceedings.

"Citizens shall have the right to organize, except in military or semi-military organizations not under the supervision of the State, and except for purposes of resisting the duly constituted authority of this State or of the United States. Employees shall have the right to bargain collectively through representatives of their own choosing."

The phraseology is that of the "Model State Constitution," Article I, Section 103. The provision for employees to bargain collectively was contained in the 1942 draft, Article III, Section VII, paragraph 2. Both the New York and Missouri Constitutions contain a similar provision. This addition might be considered an extension of the 1844 provision (paragraph 18) for "freedom of assembly." The prohibition of military or semi-military organizations needs no amplification. The League would like to speak on the collective bargaining provision from the point of view of the public welfare.

While there seems to be a great deal of labor unrest today, it is well to consider some of the conditions existing about the time our present Constitution was written and during the intervening years. There were still some slaves, apprentices were hired out at no pay, the poor were sold to the lowest bidder, there was no free public school system, Paterson textile mills, employing mostly women and children, started work at 4:30 A.M. and worked as long as 16 hours a day. One of the first strikes occurred in Paterson in 1828. In 1830 a workingman's party in Newark asked for removal of property qualifications for voting, and free schools. Workers were just beginning to organize in Paterson, Newark, Trenton, and New Brunswick to try to improve their conditions.

To obtain just the right to organize was a fight all the way. New Jersey, too, has had its share of bloodshed. In 1915 deputy sheriffs hired from a Newark detective agency fired on unarmed pickets of the Williams and Clark fertilizer factory at Carteret, killing 6 and wounding 28. In 1916 guards of the Standard Oil Company in Bayonne killed 8 and severely wounded 17 men. In 1938 the LaFollette congressional investigation found that 11 New Jersey corporations spent almost a million dollars from 1933 to 1937 in the hiring of labor spies, strikebreaking, munitioning and similar activities.

We have come a long way from the hiring of young children and the 16-hour day of the Paterson mills. We have an eight-hour day, five-day week, prohibition of child labor, the beginnings of a good social security system, regulation and provisions to correct many of the abuses of an industrial system. We have many more industries which settle their differences peacefully across the bargaining table than those which do not. The latter are the only ones most of us hear about, because they make better stories. No one can doubt that organized workers through collective bargaining have played a major part in obtaining better working conditions. The welfare of the workers is a measure of the degree of civilization of any nation. One

of the first, if not the first, organizations the dictator nations have destroyed is the trade union. Representatives of industry now maintain that they have no thought or desire to do away with employee organizations or their right to bargain collectively. Their good faith can be proved by urging with us that this right be added to the others in our new Constitution's Bill of Rights. This is one of the positive, forward-looking steps in bringing industrial peace for the benefit of the public as a whole.

Two other League members are going to talk on item number 3, page 2, the anti-discrimination clause.

CHAIRMAN: You have heard Mrs. Fobert. Do any members of the Committee have any questions? . . . Apparently there are no questions, Mrs. Fobert. Pardon me—Mr. Park.

MR. LAWRENCE N. PARK: I would like to ask you a question.

MRS. FOBERT: I would be glad to answer.

MR. PARK: Does your organization consider whether it would be or would not be desirable, with regard to this collective bargaining proposition, to restrict or to prohibit the activities of state employees? My question may not be framed properly. If there is a right of collective bargaining, it probably presupposes that there is a right to strike if you don't get the bargaining. What would be desirable from the standpoint of public officials or public employees?

MRS. FOBERT: We have considered the right of collective bargaining and forming organizations for public employees as well as private. We feel that they should have the right to present their problem, through representatives of their own choosing, to someone representing the government. However, we feel that the Legislature will make, as it has made, provisions as to whether certain practices of trade union organizations and certain practices of employee organizations of the government should be carried on or should not be carried on. We feel that that part is up to the Legislature.

CHAIRMAN: Are there any other questions? . . . If there are no other questions up to this time, then we will hear from Mrs. L. B. Willette. Is that the correct pronunciation? Mrs. Willette of Belleville, New Jersey. This appearance is also for the League of Women Voters, I believe.

MRS. LENORA B. WILLETTE: The League of Women Voters has inserted an item number 3 in its proposal (*reading*):

"No person shall be subjected to any discrimination in his civil rights because of race, color, or creed."

It is the consensus of the League of Women Voters of New Jersey that there should be a provision in the Bill of Rights of the New Jersey State Constitution which will guarantee full and equal civil rights to persons of minority groups, whether of racial, religious or national origin. The League of Women Voters offers this provision

(reading):

"No person shall be subjected to any discrimination in his civil rights because of race, color, creed or religion."

That such a provision has a rightful place in the constitution of any democracy is obvious, but just where it should be placed in our New Jersey Bill of Rights is for the Convention to decide. As a member of a minority group, and also a member of the League of Women Voters, I should like to recommend that this provision be the closing statement of Article I. Thus, the Article would read:

"All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. Therefore, no person shall be subjected to any discrimination in his civil rights because of race, color, creed or religion."

In such a position, the provision is supported by the listed rights, and becomes a secure part of the whole, to a greater degree than if it were placed at the close of Bill of Rights as an afterthought tacked on as a gesture of appeasement.

Discrimination is a dangerous element in human relations. It divides the people and therefore undermines the strength of the nation. America needs national solidarity, and national solidarity cannot be possible without all people on the state and national levels working together in mutual trust and equality of opportunity.

CHAIRMAN: That is the end of this statement?

MRS. WILLETTE: Yes, that's the end of this statement, to provision 3.

CHAIRMAN: You have heard the testimony of this witness. Are there any questions? . . . If there are no questions at this time, we will hear from Mrs. C. F. Keller, Montclair, New Jersey, who is also appearing for the League of Women Voters.

MRS. C. F. KELLER: I just want to emphasize that the point of view expressed by Mrs. Willette is the point of view of the members of the League of Women Voters of 44 local leagues, 11 counties in the State, arrived at after a careful study and discussion. We wish to urge your consideration of this item in writing the Bill of Rights in this Constitution.

CHAIRMAN: Are there any questions? . . . You mentioned 44 local leagues. Do you have an approximate estimate of your membership in these leagues?

MRS. KELLER: 4,000.

CHAIRMAN: Are there any other questions? . . . If there are no other questions at this time, we will now hear from Mr. J. L. Bustard, who is connected with the Division Against Discrimination, State Department of Education.

MR. JOSEPH L. BUSTARD: Mr. Chairman and members of the

Committee:

I am more or less here to make an official recommendation to the Committee on Rights and Privileges, and for that reason I should tell you, I think, first, how it has some official backing. The Anti-Discrimination Law passed by the Legislature of 1945 created a State Council against Discrimination. This State Council is composed of representative citizens serving without pay. The law, when it was set up, outlined certain duties for the State Council to perform. Perhaps the best way to explain that is to read what the law says concerning the membership of the State Council. It says this (*reading*):

"The State Council shall create such advisory agencies and conciliation councils, local, regional or state-wide as in its judgment will aid in effectuating the purposes of this Act."

The purposes of the act are to eliminate discrimination in employment and otherwise. The Legislature in setting up these duties had that in mind when they said that the State Council shall organize these regional councils and so on, and empower them to study the problems of discrimination in all or specific fields of human relationships, or in specific instances of discrimination because of race, creed, color, national origin or ancestry. These councils were to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups of population of the State, and make recommendations to the State Council for the development of policies and procedures in general and in specific instances. The State Council may recommend programs to the appropriate state agencies.

The State Council at its regular meeting in May considered this problem; in fact, it considered it earlier than May, but at its regular May meeting it took formal action, and it is making a formal recommendation to the Committee on Rights and Privileges. That recommendation is as follows (*reading*):

"There shall be included in the new Constitution a section of the same or similar substance as contained in the New York State Constitution which reads as follows: 'No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall because of race, color, creed or religion be subjected to any discrimination against his civil rights by any other person or by any firm, corporation or institution or by this State or any agency or subdivision of the State.'"

I think at this time I should tell you who the members of the State Council are. The Chairman of the State Council is Dr. Robert C. Clothier, whom I think you know; Mr. James Kerney, Jr., the owner of the *Trenton Times* newspaper; Mr. Harry B. Bell, an executive of the Western Electric Company in Kearny; Mr. Herbert H. Tate, a lawyer in Newark; Miss Margaret Warner, from Burlington County, a welfare worker; Mr. Jacob Stern, a business man from Paterson, and Mr. Louis P. Marciante, the State President of the

American Federation of Labor. I give you those names to show you that the State Council is composed of a representative group of citizens of the State.

CHAIRMAN: Are there any questions for Mr. Bustard?

MR. JOHN H. PURSEL: What progress has the Commission made in improving conditions, if any?

MR. BUSTARD: Well, that's a hard question to answer without getting into the whole working of the law. We do find that we have made a great deal of progress in eliminating employment discrimination in many large corporations, although we do not claim that has been eliminated throughout the State of New Jersey. We are also making some progress in various areas of the State on some of these other problems of discrimination.

COMMITTEE MEMBER: Do you favor adding to the New York clause in the Constitution a clause something like this (*reading*):

"The opportunity to obtain employment without discrimination because of race, creed, color or natural origin is hereby recognized as and is declared to be a civil right."

MR. BUSTARD: I think that you're getting into a definition of what is basic and what isn't basic in the Constitution. In other words, I think that's a problem that you gentlemen will have to iron out. We're concerned with the basic idea being in the Constitution, or a recommendation of similar substance. I think it is very important and very basic that that be in the Constitution, but the exact wording is for the members of the Committee and the Convention to work out.

COMMITTEE MEMBER: You're primarily interested in employment, isn't that right?

MR. BUSTARD: No, no, no. Don't misunderstand me. We're primarily interested in all areas of discrimination. The law, the specific law that we administer, is a law against discrimination in employment. It is a law in which the New Jersey Legislature has declared that the opportunity to obtain employment is a civil right regardless of race, creed, color, national origin, or ancestry.

MR. RONALD D. GLASS: In connection with Mr. Bustard's remarks, I would also like to say at this time that the New Jersey Education Association, an organization which has for its membership almost all of the teachers in the State, in its delegate assembly passed a resolution, with almost the exact wording of Mr. Bustard's resolution, which I was privileged to present before the entire Convention. The New Jersey Education Association goes on record as backing this proposal a hundred per cent.

MR. PARK: I wonder if I may look at that copy that you have there, the New York—

MR. BUSTARD: Yes, I have copies here.

MR. PARK: I want to study it over only for a second.

CHAIRMAN: Are there any other questions?

MR. BUSTARD: Mr. Chairman, may I make another remark? The New York Constitution at the present time is the only one in the United States that carries a clause of this nature. New York State has led in certain fields of legislation, in certain fields of thinking, for many years. In all other instances, New Jersey hasn't been far behind.

The State Council, in discussing this, felt that certainly in matters as important as this New Jersey would go along with New York, showing the way to the rest of the states throughout the United States. It would be fitting and proper, with a new Constitution, not to lag behind but to join New York in this democratic way of thinking.

MR. PARK: I should like to ask you a question and your advice, sir. The proposal that I now hold in my hand starts out with the first sentence saying that, "No person shall be denied the equal protection of the laws of this State or any subdivision thereof." Now, is it not true that you have the identical provision in the Fourteenth Amendment, which is also a law of this State, and that this is actually writing into our Constitution what's already in there, whether we want it or whether we don't?

MR. BUSTARD: I am not a lawyer. I think you'll have some constitutional lawyers here tomorrow talking on this same subject. I think they'd be better able to answer that than I am. There aren't many states that make laws that do not apply to all of the inhabitants of the state. In other words, the segregation laws of the South, and voting laws, and laws of that type, regardless of the Fourteenth Amendment, still operate in those states. Now, if I were a lawyer, I could probably answer your question more intelligently.

Mr. PARK: Well, now, can you give us any good reason—I'm not cross-examining you—but I want to know why you have tacked on this expression "any subdivision thereof"? Does that have any real value?

MR. BUSTARD: Just a minute. Well, again not being a lawyer, I assume that it means not only the State but a county, municipality, or a school district.

MR. PARK: Thank you a lot.

CHAIRMAN: Mr. Randolph.

MR. OLIVER RANDOLPH: Can you tell us where in the Constitution you would suggest that this be put?

MR. BUSTARD: The State Council felt that it was the privilege of the Convention to decide upon that. Personally, I think it should be in the Bill of Rights.

MR. RANDOLPH: May I ask you what effect adoption of such a clause would have with respect to those sections of New Jersey where there are separate schools for races?

MR. BUSTARD: Well, I think it would make any action of the Legislature constitutional. That is, any action that the Legislature might take in later years, or after the Constitution is adopted by the people, would stand up in court, and so on. I think that would apply to several of our civil rights laws. At the present time their constitutionality might be open to court attack. But if, in the Constitution, the Legislature is given certain powers and if certain things are listed as civil rights, then I don't think their constitutionality could be attacked.

CHAIRMAN: Are there any questions at this time? Any further questions?

MR. PARK: Your provision refers to non-discrimination against the person because of color, creed, or religion. What about non-discrimination against a person who has no religion, or professes none?

MR. BUSTARD: Well, certainly you couldn't discriminate against that person, either. Then you would be discriminating against him because he was a non-religionist.

MR. PARK: I have another question, Mr. Bustard. This is not my own finding, but it was mentioned to me today that in New York State, in the militia, they still had some element of discrimination. Are you informed so that you can give us some thoughts on that?

MR. BUSTARD: I don't know anything about it in New York State, but I've heard that that discrimination exists in the New Jersey militia. We have some segregated National Guard units in New Jersey and it's a very expensive proposition and, of course, not a very sound proposition.

MR. RANDOLPH: How would that shape up in with the Federal Government, which has separate regiments based on race? How would a state fare with regard to that?

MR. BUSTARD: Well, I think the Federal Government's laws are based on the federal troops and not on the state militia. I think there is a committee in New Jersey now that has gone into that matter thoroughly. It has some rulings to the effect that it isn't necessary to segregate troops in order to participate in acquiring federal funds, except in those states that have laws setting up all types of segregation.

CHAIRMAN: Are there any other questions? . . . If not, I will excuse Mr. Bustard. Thank you very much, sir.

At this time we have on our schedule Mr. William C. Cope, of Drake College, Newark, New Jersey.

MR. WILLIAM C. COPE: Mr. Chairman, and delegates to the Constitutional Convention:

I would have you know at the outset that I am very much pleased to come here today in response to an invitation I have received from the Chairman of this particular hearing. I want to congratulate the Convention upon the manner in which it is carrying on the proceedings. You are inviting to be heard, I suspect, men and women from all levels and all walks of life here in New Jersey. You are giving them a chance to express themselves. As far as I know, there is no other place in the world where anyone would have such an opportunity as he has here in this country and in this State in particular. There are places in the world today where a citizen could not be heard before an august body of this type. And if he insisted upon being heard, I suspect that he might expose himself to liquidation. By liquidation I mean imprisonment, exile, or even the firing squad. You are conducting this Convention and these hearings in what we'd like to call the American way, the democratic way, the people's way. I am certain the people in New Jersey are highly pleased with the manner in which the Convention and the hearings are being carried on.

I come here as a humble and modest and common-garden variety type of citizen. I don't know that I can add a great deal to the wealth of wisdom that you already possess. Neither do I feel that it is at all essential for me to attempt to qualify myself at this time. However, in view of the fact that I represent no one in particular, I would like to tell you that I am not a native of New Jersey. I've been in the State 35 years, having come from one of the great mid-Western States. I have great respect for New Jersey and great affection for New Jersey, and yield to no one when it comes to my patriotic affection for this great State. I have served in governmental capacities for a good many years.

At the present time I am president of the Drake Schools of New Jersey—that's a chain-school organization. I think I am safe in saying that no less than 100,000 business students have passed through these schools or directly under my own personal jurisdiction. The Drake Schools of New York and New Jersey lay claim to the statement that more than 350,000 students have attended these schools since the year 1883.

I have said to you that I have served in many capacities in the government of the United States, municipal government and state government. During the war I spent four and one-half years with the United States Treasury Department as a volunteer in the war finance effort. Back in the darks days of the depression—peculiar as it may seem, because I am an old Republican, was then, always have been, no one has questioned my party loyalty—I was appointed by

the President of the United States as chairman of the Federal Adjustment Board for the State of New Jersey, which was the highest authority in the State with respect to the National Recovery Administration. I am happy to say that on that board there sat with me a representative of labor, Honorable Vincent J. Murphy, who is Mayor of the City of Newark, and he is still, as he was then, Secretary of the American Federation of Labor for the State of New Jersey. There also sat upon that board Mr. Norman Wiss, who represented employers. He is an outstanding industrialist in Newark. I am pleased to say that largely because of the two able gentlemen who served on the board with me, we never had a reversal. I have served the State of New Jersey for 20 years in one capacity or another.

I have served on the Crippled Children's Commission for 20 years, and I want to say to you that that commission is a great agency of mercy and renders great service to the physically handicapped in this State under 21 years of age. That commission needed no particular legislation, no constitutional preference, to come into being, and has needed no constitutional preference to obtain the enabling legislation that has enabled it to be so successful. Many states in the Union, I am told, pattern after the New Jersey Crippled Children's Commission with respect to a similar program.

I have served for many years upon the Board of Conservation, which since has been changed to the Department of Conservation. It didn't require constitutional amendment to change the Board of Conservation to the Department of Conservation.

I have the very great honor of representing the Department of Conservation at this time upon the Interstate Sanitation Commission, on which New York, New Jersey and Connecticut are represented. That commission does great work; it is empowered through legislative enactment by the three states and it operates also under a federal compact.

The point I want to make is that there is much that can be obtained through legislative enactment rather than trying to write everything that you can think of in the Constitution. I want to ask of you delegates here today, that in coming to grips, as it were, with the Bill of Rights, that you make no changes whatever. The Bill of Rights is well written and I don't believe the Bill of Rights should be opened up to any changes. I don't believe, ladies and gentlemen, that any person, place or thing should be mentioned in the Bill of Rights that isn't already there. I don't believe anything should be added to the Bill of Rights, and I don't think anything should be deleted therefrom. I think that if you begin to tamper with the Bill of Rights that it will be very much like trying to improve upon the golden rule, or the Ten Commandments. I realize,

and you do, too, I am sure, that quite likely there will be groups, very fine groups, groups that are outstanding and do great work here in New Jersey, that will apply pressure to get special preference written into the Bill of Rights. There will also be pressure groups, deliberate pressure groups, that will attempt to get special consideration some way or other in the Bill of Rights. I ask of you men and you women here today to be unyielding and unbending and unfaltering in dealing with the Bill of Rights. I say to you that I don't think it can be improved upon in any way. If there be special groups in New Jersey or deserving groups, groups that believe they're deserving and worthy of special consideration, I'm certain they can obtain that special consideration through legislative enactment if the people of New Jersey want it so stated.

Gentlemen, we must have a Constitution for all of the people all the time, and that's the kind of a Constitution, insofar as the Bill of Rights is concerned, that we have at this time. We don't want the type of Constitution that offers special privileges, or special advantages, for certain groups, persons, places or things. If you open up the Bill of Rights, if you begin to include other persons, places or things that aren't mentioned there at the present time, I don't know what you're going to face, nor where you're going to get off. You may, you quite likely will, be faced with terrific embarrassment.

I realize that you men and you women today are faced with the greatest responsibility any group of persons has been faced with in the last 103 years here in the State of New Jersey. If, perchance, there comes out of this Convention a Constitution that offers preferences to special groups, that Constitution is not going to command the respect and the confidence of the public at large, and it is going to make it very difficult to obtain good law enforcement, in my opinion.

Now, ladies and gentlemen, it has been very gracious of you to allow me to come here today and express myself with respect to the Bill of Rights. I appreciate your courtesy and consideration, I assure you. And I say in conclusion, that what we want is the kind of Constitution that will favor all of the people all of the time and not part of the people part of the time, nor all the people part of the time. Thank you, Mr. Chairman.

CHAIRMAN: Do any members of the Committee have any questions they wish to direct to Mr. Cope at this time? . . . If not, we will proceed. Pardon me, Mr. Randolph.

MR. RANDOLPH: Dr. Cope, do you have any specific criticism of a clause in the Constitution similar to the one advocated by Mr. Bustard?

MR. COPE: I don't think, Mr. Randolph, there should be any changes. I have already expressed myself. I think the Bill of Rights

should ride just as it is. I believe that if there are groups who desire legislation, they should seek whatever advantages they wish to through legislative enactment.

MR. ROBERT CAREY: It's a good idea then, Mr. Cope, that the Constitution should be drawn, as far as the declaration of rights is concerned, so that it applies to everybody alike?

MR. COPE: That's right.

MR. CAREY: No class.

MR. COPE: That's right, in my opinion. I think if you begin to tamper with the Bill of Rights, you are going to find yourselves in very hot water with respect to all sorts of groups. I single out no particular group, because there are many groups here in New Jersey that are worthy and are doing fine work. They could obtain any special privilege or advantage, if the people of New Jersey want to confer it on them, through legislative enactments rather than to try to write it into the Constitution.

CHAIRMAN: Do you have a question, Mr. Park?

MR. PARK: We have a provision in our Constitution in Article I, paragraph 5, that pertains to the problem of libel. Our provision has quite a history in that it confers upon the jury the right to determine the law and the facts. Would you have any objection to modifying a situation of that type?

MR. COPE: Modifying it, sir? In what way?

MR. PARK: Well, isn't it strange to think that the question of adjudicating law and fact should be committed to the jury?

MR. COPE: Well, that I can understand. I can't retreat from the position I've taken that there should be no changes in that part of the Constitution which has to do with the Bill of Rights. I presume you are reading from that part of it at the present time. May I say that I think there is going to come out of this Convention a wonderful Constitution. I mean that. But you are not going to draw the kind of a Constitution that would be so perfect that you will eliminate all vice and all evil and all fraud of all kinds in the State of New Jersey. That's just impossible. You're never going to have a perfect document, in my opinion.

MR. PURSEL: You realize, Dr. Cope, that after the Civil War, when the slaves were freed, Congress passed the 13th, 14th and 15th Amendments which were aimed to give the slaves rights, legal rights. In view of the fact that our Constitution was written in 1844, when colored men were slaves, doesn't it seem fair to you that some right be given to them in the Constitution, the same as it was in the Federal Constitution?

MR. COPE: I am not in any way opposed to the colored people. I want to be on record as to that point. Your question might infer that I am. I'm not.

MR. PURSEL: I didn't mean it that way.

MR. COPE: I am employing four colored persons at the present time on my own personal payroll, and in my organization we have several. I've gotten along very well with the colored people for many years. But I still say to you, sir, that I don't believe in changing the Bill of Rights as it is written at this time, in any way whatsoever.

MR. FRANCIS A. STANGER, JR.: May I ask a question of you please, sir? You would not give the women of New Jersey a constitutional rather than a legislative standing? At the present time their rights are defined by the Legislature rather than by the Constitution. You would not give them a constitutional change?

MR. COPE: I would not change the Constitution, insofar as the Bill of Rights is concerned.

MR. STANGER: You would leave it that the right of womanhood can be chained by the will and whim of a Legislature?

MR. COPE: Well, that isn't going to happen; and you have the right of constitutional amendment if and when the people of New Jersey should decide they want certain changes, isn't that right, sir?

MR. STANGER: Yes, but you don't think that they are entitled to a constitutional standing?

MR. COPE: Oh no, I wouldn't change the Bill of Rights in any way. It's too dangerous to—as I'm going to put it—to tinker with it at this time. After all, we have in this country the finest type of government to be found anywhere in the world. We must be pretty careful when it comes to making major changes, because the major changes may lead us in the direction of communistic government.

MR. STANGER: It is your opinion that there should be no change in the Bill of Rights. Does your belief extend so far as saying there should be no change whatsoever in the Constitution as a whole?

MR. COPE: No. I haven't said that, sir.

MR. STANGER: Well, what is the logic of your argument?

MR. COPE: I am talking only about the Bill of Rights.

MR. STANGER: I know, but you want that to stand because you don't want any interruption of the constitutional government as it now exists.

MR. COPE: Not of the Bill of Rights, sir. I am not talking of some other phases of the Constitution. That wasn't what I was invited here for, sir, today. I understand that this was a hearing that had to do with the Bill of Rights.

MR. STANGER: Excuse me if I have transgressed, but I am wondering how far your thought goes as to the document as a whole, rather than this particular portion of it?

MR. COPE: Well, I suspect there are changes. I am not too well

prepared to discuss those with you. I don't know just what you have in mind on some other points in the Constitution. Maybe you have gambling, or some other provision that is written therein.

MR. STANGER: Well, I didn't have any particular point in mind. I was just trying to get your thought on the subject, rather than mine. But let me ask you: You don't think that all the citizens of the State of New Jersey should have equal constitutional rights expressed in the document itself?

MR. COPE: They have that now.

MR. STANGER: No, sir. I beg your pardon, they do not! And if they do not, then will you say they should have?

MR. COPE: No, the Constitution isn't written just for white people. Is that what we are getting at, sir? That the New Jersey Constitution, the Bill of Rights, is just written for the white folk? Is that what you are trying to say to me?

MR. STANGER: Well, yes. The State Constitution, of course, has been altered by the Federal Constitution. But don't you think that we should take that alteration in mind in our State Constitution?

MR. COPE: No. I don't think we should change the Bill of Rights. I've tried to make myself clear there. And while I want to be friendly about it, we're just running around in circles. I don't think the Bill of Rights should be changed.

MR. STANGER: In any respect whatsoever?

MR. COPE: In any respect.

MR. STANGER: But don't misunderstand me; I'm as friendly as you are.

MR. COPE: Yes, I think you are.

MR. STANGER: I didn't mean anything to offend you.

MR. COPE: I know it.

MR. STANGER: I'm just as hopeful as you are that out of this Convention comes the grandest Constitution of any State in the Union. I hope it will be so good that every state in the Union that perchance considers revision will consider our Constitution as a model. Thank you very much.

MRS. MARIE H. KATZENBACH: A reference is made that "all men are created equal." That does not apply to women. Would you not feel that "all persons are created equal" would be better in Article I? Knowing that we have suffrage in the State, ought that not to be all "citizens" [in Article II]?

MR. COPE: Well, you already have suffrage which puts you at the level of all citizens being equal, does it not?

MRS. KATZENBACH: All male citizens, however. Our Bill of Rights so designates.

MR. COPE: I have taken a very strong stand, personally, and I

think if you begin to change the Bill of Rights, there's going to be no closing it up again. If you open it up, you're going to get pressure from every direction and you may have some organizations that I belong to, such as the Protestant Church, the service club and certain fraternities, bring terrific pressure to bear. I suggest you keep yourselves guarded when it comes to the Bill of Rights.

MRS. KATZENBACH: Thank you. You're pretty strong, however.

CHAIRMAN: Are there any other questions? . . . If not, at this time we will hear from Richard Thomas Duffy of the American Legion. Will you please come forward Mr. Duffy?

MR. RICHARD THOMAS DUFFY: Mr. Chairman and members of the Committee:

I'm not here to discuss anything strictly on the Bill of Rights, which has been discussed previously. I represent the American Legion, Department of New Jersey, and I have with me today Dr. Samuel Loveman, our Commander of the State of New Jersey; Mr. William McKinley, our Chairman of the Rehabilitation Committee, and Mr. Joseph Carty, the Chairman of our Legislative Committee. I happen to be the Judge Advocate of the Department of New Jersey.

Under present legislation, many exemptions, preferences, and privileges are granted to veterans of the various wars and to their dependents, but there is nothing in the Constitution at the present time that mentions veterans in any way, shape, or form. We are particularly interested in having any future legislation that may be passed by our Legislature for the benefit of veterans or their dependents be not subject to constitutional attack. The existing legislation I roughly classify under three categories; that type of legislation which pertains to tax exemption; that type of legislation that pertains to preferences in civil service examinations and appointment to public office; and that type of legislation which extends privileges to the veterans such as the special pension system, including the pension for the blind and paraplegic veterans.

I have a list of 30 or 40 different types of legislation that I characterize under privilege. Some of these laws are good from a constitutional standpoint, some are doubtful, and some are absolutely bad. From a constitutional standpoint I will cite just one that I consider will never stand up in the courts, and that's the \$500 exemption that the veteran is granted in his tax assessment. Some years ago, in the case of *Tippett v McGrath*,¹ this matter came before the courts on the question of an exempt fireman. The court held that inasmuch as the exemption was not directed at the property or to the use to which it was put, the legislation was bad, and it was thrown out. That's never been tested as to a veteran, but logic-

¹ 70 N.J.L. 111, affirmed 71 N.J.L. 338.

ally the courts would have to follow the same reasoning. We would like to have these things clarified in the Constitution.

There are two ways of approaching the subject: one is to take the individual Articles of the Constitution and so word them that they will carry out the intention that the veterans' legislation will be sound, and not subject to constitutional attack. For instance, the tax exemption clause might very well be taken care of by the taxation committee. The preference legislation might be so worded that it would be taken care of by your civil service and preference committee. But if you take this line of approach you leave hanging in the air many, many acts. We have a statute on the books that permits municipalities to grant money to veterans' organizations, and I doubt the constitutionality of that because the Constitution says that the State shall make no gift of property or money to any corporation, firm or individual whatsoever.

We believe that whatever the Legislature gives should be given without any constitutional cloud. We advanced this argument before the prior constitutional revision committees and they saw fit to adopt the method of trying to take care of the situation in each particular paragraph. But that's quite a job. The American Legion recommends for your consideration a new Article in the Constitution that will cover the overall picture and be all-embracing, so that if our method or our suggestion is adopted, this new Article will make unnecessary any changes in the present set-up under the other clauses in the Constitution. I will read what we have in mind and recommend for your consideration. The clause must necessarily be a dominant one. If it's merely equal to the other clauses in the Constitution, the court may very well say, "Yes, the Constitution grants this privilege or this preference but only where it's not inconsistent with some other Article in the Constitution." We have therefore worded it so that it will be a dominant clause in the Constitution and above some other clauses. The clause we recommend should be in a separate Article, distinct and by itself, and it should read as follows (*reading*):

"Notwithstanding anything in the Constitution contained, the Legislature shall have the power to grant preferences, privileges and exemptions to persons serving, or who shall have served, in the armed forces of the United States of America in time of war, and to the dependents of such persons, as may be determined by it."

If our recommendation is carried out it will be along the line that no legislation should be placed in the Constitution, but the Constitution should be a series of Articles of general nature. We feel that it will take away the necessity of amending various Articles in the Constitution, and that this one overall, dominant Article will answer the purpose and leave to the good judgment of succeeding Legislatures what shall be granted in the way of exemptions, prefer-

ences and privileges to veterans or their dependents.

CHAIRMAN: Are there any questions?

MR. PARK: Will you read that clause again slowly so that I can write it down, so we can compare it?

MR. DUFFY (*reading*):

"Notwithstanding anything in the Constitution contained, the Legislature shall have the power to grant preferences, privileges and exemptions to persons serving, or who shall have served, in the armed forces of the United States of America in time of war, and to the dependents of such persons, as may be defined by it."

MR. PARK: Now, as I take it, your proposal would be operative only in the future—as to future legislation?

MR. DUFFY: Yes. I understand that this Constitution will have a saving clause on existing legislation.

MR. PARK: Well, then, as I understand it, if a clause of this type were put in the Constitution, the effect would be to remove from doubt any prior statute?

MR. DUFFY: No, sir. I would say that after the adoption of the new Constitution, we would certainly ask the Legislature to re-enact those statutes which are of doubtful constitutionality.

MR. PARK: Well, then, it must be because you have a view that this provision could not very well be operative unless we expressly provided for it, and that you really would have to enact these laws over again in order to have the constitutional sanction.

MR. DUFFY: There aren't too many of them, sir. There are only a few that we can see to be bad.

MR. PARK: Thank you.

CHAIRMAN: Are there any other questions for Mr. Duffy from any members of the Committee?

MR. DUFFY: Mr. McKinley would like to be heard on the general reasons, if the Committee would be so kind as to hear him?

CHAIRMAN: Mr. McKinley. . . Thank you, Mr. Duffy, for your appearance and expression of views.

MR. WILLIAM G. MCKINLEY: Mr. Chairman and members of the Committee:

I am William G. McKinley, of 44 Kensington Avenue, Jersey City, and I am chairman of the Rehabilitation Committee of the Department of New Jersey of the American Legion. I suppose this Committee would be interested to know why we are seeking this change and the extent of its effect. I am not going to burden you with a flock of statistics, but you may take down these few figures. First, of World War I veterans presently living, there are 118,000 in this State. Of World War II veterans, according to our rather narrow definition of it, which is the period of time between December 7, 1941 and September 2, 1945, there are 550,000. If the Legislature should by definition, as Mr. Duffy has pointed out to you, extend

that base, it is possible that that number might go up to 650,000, to 700,000 veterans.

Now, our major concern is that our civil service laws are 43 years old. During that period of time there have been numerous amendments to the civil service laws, originating, of course, with certain advantages given to the Spanish War veterans as far back as 1904. In 1920, following World War I, there were a number of amendments that were made to the Civil Service Act which extended benefits, preferential benefits, to World War I veterans. As Mr. Duffy has pointed out, certain of those acts are of doubtful nature, some of them have already been adjudged unconstitutional, and others of them are considered by their wording to be good laws. But the difficulty that presents itself is this: Because of the questionable nature of some of these preferences under the Constitution, it is impossible to make a coordinated civil service law, including veterans' preference, because of the fact that the courts can attack certain of those preferences as being applicable only to a particular class or person.

The veterans today who are most concerned with these preferential rights, and civil service in particular, are naturally this great mass of World War II veterans, who unquestionably will dominate all civil service examinations for many years to come. We are very much concerned that those young men be given all the privileges and advantages that possibly can obtain to them, particularly those having physical disabilities and, therefore, vocational handicaps. We believe that the State Government and municipal governments should grant certain preferences to this type of veteran.

We have not been able to get a very accurate count of World War I veterans presently in civil service, but they number nearly 10,000, and that takes in not only the employees of the State Government but also the municipal governments and county governments. Those men are now of the average age of 54-55, many of them with 18 to 23 years of service. They are naturally approaching the age when they should be seeking retirement and, consequently, pensions. Many of the retirement acts, many of the pension privileges of veterans, are subject to attack and can be questioned. It is a pretty dangerous thing, in our opinion, to have employees who have been enjoying veterans' preference for 25 years or more come to the point at which they are of retirement age and then by some act of the Legislature or an attack in the courts be denied these privileges. I have mentioned these things to you as being of gravest concern to us at the present time.

Mr. Duffy pointed out to you the category of laws that affect privileges. A great many of our organizations, particularly the American Legion with 450-odd posts in the State, are concerned with

the traditional Memorial Day and Armistice Day services and other patriotic demonstrations that have come into veterans' organizations, in which they receive from the city or municipality in which their post is located certain monetary benefits by way of appropriations to conduct these exercises. Those things can be questioned presently under the law, and they have been in certain of the towns and communities of this State.

Now, I confine myself, naturally, to the American Legion. But what I say of the American Legion is true of all other veteran organizations. I understand there are representatives here of the Veterans of Foreign Wars who probably will join with us in similar expressions of opinion. Thank you, Mr. Chairman.

CHAIRMAN: Do any members of the Committee have any questions? . . . Thank you, Mr. McKinley, for your appearance and for giving us your views . . . Just a minute, Mr. McKinley, pardon me. Mr. Carey.

MR. CAREY: I want to ask you only one question. Is there anything that the veterans need that they can't get from the Legislature?

MR. MCKINLEY: No, Bob. The legislatures down through the years have been reasonable and generous with us. The only thing is the question that, having been generous and fair and very nice to us, whether a taxpayer's suit won't come along to take it away from us. That's what we're fearful of.

MR. CAREY: You think that the rights that aren't certain would become more secure if they were expressed in the Constitution?

MR. MCKINLEY: That's right.

MR. CAREY: Otherwise, legislative action would be ample, wouldn't it?

MR. MCKINLEY: That's right. The constitutional security is all we need.

MR. CAREY: What's more, the Legislature treats you fellows pretty right, doesn't it?

MR. MCKINLEY: It does, you know.

MR. CAREY: Most of them are better to you than they are to themselves, aren't they?

MR. MCKINLEY: That's right.

MR. CAREY: You have submitted your ideas here so that we can have them in detail to study, haven't you?

MR. MCKINLEY: If we haven't, we will. Mr. Duffy is to prepare a brief, I believe, for the information of this Committee.

MR. CAREY: We are here to give the best Constitution we can to this State and everybody in it.

MR. MCKINLEY: Well, Bob, there is only one further point that I can make—I hope the rest of the Committee will forgive me for the apparent familiarity, but I grew up underneath Bob Carey's feet

back there in Jersey City and he's somewhat of a combination grandfather to me and what have you. That is the reason I call him "Bob." We feel that we need this constitutional protection because when this Constitution was written in 1844 there were very few, if any, veterans in the State. After the Civil War, when the Civil War veterans were fairly dominant in public affairs, there was no civil service in this State. All of the officials being good Republicans, they gave all the jobs to veterans. When they came along with the Spanish War veterans, there weren't too many of them, as measured by the overall population. But you see the predicament we are getting into now when you can count up to, well I have a positive count now on 670,000 veterans of World War I and World War II who are definitely affected and concerned, particularly with civil service, and they are a significant portion of our population now. I believe the population of New Jersey is about 5,000,000. So, with a minimum of 670,000 veterans in the State, you have a very substantial portion of the population as a whole. We believe it is now to a point where it affects so many persons in the State that there should be no doubt in the Constitution as to the legality of the acts of the Legislature insofar as those acts concern veterans.

CHAIRMAN: Are there any other questions?

At this time I will call on Mr. Elwood M. Dean, speaking, I believe, for the Communist Party of New Jersey.

MR. ELWOOD M. DEAN: Mr. Chairman and members of the Committee (*reading*):

"The Communist Party of New Jersey looks upon the present effort to revise our State's Constitution as a positive step creating the opportunity for the people of New Jersey to modernize their basic law and bring it into harmony with recent developments in the relations between its citizens. It is an opportunity to restate in firm language the fundamental adherence of the overwhelming majority of us to the great and traditional American principles of democracy and freedom. But more than any other single thing, this Constitutional Convention affords the people of New Jersey an incomparable occasion to set down in the fundamental law certain guarantees to make freedom and liberty the vibrant and dynamic factors which present-day democracy demands that they be.

Our Constitutional Convention is meeting during a time when the much-mentioned fascist danger is a real thing. One need not be particularly astute to recognize the trend. Already, so soon after we have in unity scored a military defeat over the Axis powers, the National Association of Manufacturers, the United States Chamber of Commerce, and those who represent their interests in governments and in communities, are haranguing us with the same slogans and proposals which prefaced the coming to power of fascism in Italy and Germany, and later in all the fascist-occupied countries of Europe. This is no longer a moot or academic question, for the results of these proposals have already begun to take their damaging toll of American liberties. Fascist-like procedures leading us in the direction of thought control and the police state are sweeping in upon the people. Concepts of freedom and liberty are being narrowed by the interpretations of executive and legislative bodies to include only those ideas and procedures which some within their own purview. We might here cite a few examples of this trend.

The Driscoll amendments to the Proctor Act deny workers in public utilities in our State the right to strike. Such legislation is clearly in opposition to both the interests of the people and their opinions. It is no signal for credit to our state administration that the telephone workers who violated this law were not subjected to mass arrest . . .”

MR. PURSEL: Mr. Chairman, I don't want to interrupt, but is this speaker going to talk on the Constitution?

MR. DEAN: If I may, Mr. Chairman, my purpose is to establish the basis upon which the Communist Party wishes to make proposals for amendments to our Constitution.

MR. PARK: In your brief, Mr. Dean, are you going to take up, after your introductory remarks, material under Article I, Rights and Privileges?

MR. DEAN: As a matter of fact, the entire statement deals with Article I of the Constitution.

CHAIRMAN: Mr. Carey.

MR. CAREY: I would like to ask one question, if I may? Whom are you speaking for here today?

MR. DEAN: I'm speaking for the Communist Party of New Jersey.

MR. CAREY: Are you reading a Communist declaration to us?

MR. DEAN: I'm reading the opinions of an organization of our State.

MR. CAREY: Well, is this organization identified with the National Communist Party?

MR. DEAN: This organization is identified with the National Communist Party.

MR. CAREY: And associated with the Russian Communist Party?

MR. DEAN: This organization is not associated with the Russian Communist Party.

MR. CAREY: And you want us to listen to 10 or 12 pages of printing that you have to read here this afternoon?

CHAIRMAN: Suppose we proceed, Mr. Carey. I understand your viewpoint and Mr. Pursel's also, and I'll ask the witness to proceed as promptly as he can and as expeditiously as possible, but proceed, please.

MR. DEAN: Thank you, Mr. Chairman. (*Continues reading*):

“ . . . It is rather to the credit of the people of New Jersey that they recognized this as destructive legislation and gave wide expression to their opinion.”

MR. CAREY: I object to this, Mr. Chairman. It has no bearing whatever on the subject at hand. Those people can strike or not. We are talking about a Bill of Rights, as I understand it, this afternoon, and this man has been invited to come here to talk about it, and it seems to me that if he is going to do it, he ought to get to it.

MR. DEAN: I believe, Mr. Chairman, that just a moment ago, in questioning a previous witness, there was a question asked by a member of the Committee as to that witness's attitude and opinion about the right of public employees to strike. I think that this is a question which rightfully comes under the first Article in our State Constitution. May I proceed, Mr. Chairman?

CHAIRMAN: I think if we let the witness proceed that—I grant that his text is a little difficult to connect with the points under discussion at this time—he may demonstrate whether he is leading up to his points. In view of the fact we haven't established any rules for hearings, I think the witness should have wide latitude to be heard.

MR. DEAN: I appreciate the Chairman's consideration. (*Continues reading*):

“The fact that Mr. Russell Watson, associated with the New Jersey Bell Telephone interests, was involved in drafting the act indicates the source of the thinking involved.

On the federal scene an even more serious situation is presented by the recently enacted Taft-Hartley Act. This legislation was manifestly conceived in the interest of the N.A.M. and contains the denial of hard-won rights and privileges of the organized labor movement. This act was properly characterized by Mr. Philip Murray of the C.I.O. as the first long step in the direction of fascism. Neither Mr. Murray, Mr. William Green, nor other leaders of the American Federation of Labor can be accused of being even faintly sympathetic to us Communists, but they see in the anti-Communist clauses of the Taft-Hartley Act a threat to the entire organized labor movement.

Any act of government which serves to restrict or delimit the rights of the working people is truly a step in the direction of fascism. And here again we might be reminded that attacks upon organized labor presaged the fascists' attainment of power. Limiting labor's rights of collective bargaining, restricting the union shop, denying workers the right to elect officials of their own choosing, are all ominous of fascism.”

MR. CAREY: Mr. Chairman. I must insist as a member of this Committee and as a citizen of the State of New Jersey, that this man, if he wants to argue and present anything that is embodied in our program here, should be permitted to do it. But if he is going simply to sit down and lecture all the people of America, and the whole nation, and try to rip everything down simply because he's here as a representative of the party that stands for those ideals and those thoughts, I think he ought to be admonished or limited in his time. I for one feel no sympathy for this type of movement and I don't hesitate to say so. I wouldn't give the Communist Party a place on the ballot in our State if I had my way, and if I would be-labor myself to find the law to do it.

I have been reading this over. It gives us no light on anything. It attacks Congress, attacks the President, attacks everybody directly and indirectly, and it is simply taking advantage of an opportunity to use a forum that he could never otherwise have had. I think he has a tremendous nerve to come here representing the element that he does at this meeting today. I just want my sentiments expressed

so he'll understand how much of an education I am getting, as one member of this Committee, from anything that he is saying.

CHAIRMAN: I will ask the witness to wait a minute. Are there any other members of the Committee who have any expression they wish to make?

MR. PURSEL: I agree with Judge Carey. This witness is talking about fascism, and communism, and he knows that there is no difference; neither of them has any use for our system of government. He is here to upset things. He's not talking on anything germane to the subject, and the Communist Party, so-called, is not a party; it's a conspiracy against our government, as has been shown in the congressional committee headed by Parnell Thomas. They take their orders from a foreign country. In case of war between this country and Russia, they wouldn't be with us at all. I think they have a nerve even coming in here, and I do think that when they come in and are granted this privilege they ought to stick to the subject and not make a stump-speech about all the bunk they believe in.

CHAIRMAN: Just a minute, please—

MR. LELAND F. FERRY: I, too, do not agree with anything this person has said, but I certainly would vote to give him permission to complete his statement.

CHAIRMAN: I concur in the opinion expressed by Mr. Ferry. Well, as long as we're polling the Committee and inasmuch as the Chairman doesn't claim to have the wisdom of Solomon, let's have the rest of the Committee express their views.

MR. PARK: Mr. Chairman, we are here to listen, and while I do not subscribe to the principles attributed to the Communist Party, I think it is our obligation to hear what they say. I must in intellectual honesty admit that the Communist Party representative could as a matter of fact read the Declaration of Independence, and while it may or may not be truly within their heart, it might be a sound thing to hear. I think that in this open forum all persons should have the privilege of speaking, and I know as a matter of fact that it will be salesmanship if the witness gets down to the point of what he wants us to do. I, therefore, recommend that he tell us what he wants us to do, but I think we should not limit him at this time.

CHAIRMAN: Mr. Glass.

MR. GLASS: I would certainly go along with his inalienable right to be heard at this time. I would suggest, in seconding Mr. Park's suggestion, that he keep strictly to the point. I think he is presenting a lot of extraneous material here and that he come to the point even though we have no rules regarding hearings. I think he should get down to business and tell us what he has to suggest, rather than giving us a speech.

CHAIRMAN: Well, as I examine the brief I see that on page 6 your specific recommendations under the Bill of Rights, Article I, are presented. I think it might expedite matters if you would be willing to turn to that and leave with us the balance of your views which lead up to it. How do you feel about that, Mr. Dean?

MR. DEAN: Mr. Chairman, it is my opinion that when we discuss the question of our Constitution and the Bill of Rights it is perfectly within the limitations of this Committee to understand the kind of thinking that goes into the proposals which the Communist Party presents. It is not our purpose at all to use this hearing as a forum. On the contrary, the statement has been drafted and printed so that the gentlemen on the Committee might see it. If we wanted to make it a forum, I think we would use a different procedure. I would like, Mr. Chairman, with your indulgence, to proceed with reading this statement and I think it will not consume more than another ten minutes at most.

CHAIRMAN: Judge Delaney, do you have any view on this? We weren't actually making a motion. I am asking for an informal expression of opinion.

MR. JOSEPH A. DELANEY: I would suggest that the witness confine his remarks, commencing with Section I.

COMMITTEE MEMBER: Second the motion.

CHAIRMAN: What page is that, sir?

MR. DELANEY: Page 6.

CHAIRMAN: Just a minute, please. Let us clear this. Mr. Taylor, may I have your views, please, on the procedure?

MR. WESLEY A. TAYLOR: I'm against Communistic views, but I think they should be allowed to present them here, and I agree with Mr. Park and Mr. Ferry.

CHAIRMAN: Mrs. Katzenbach, please.

MRS. KATZENBACH: He has very definitely said that he has something to present. Let us continue and finish this as soon as possible.

CHAIRMAN: How about you, Mr. Randolph?

MR. RANDOLPH: I, too, am opposed to the Communist Party views *in toto*, and I think from the length of this communication and the personal attacks made on certain persons in our government, that he should limit his paper beginning with page 6.

CHAIRMAN: Now, if I understand the sense of the Committee, and I think I am summing up fairly, Mr. Pursel, Mr. Randolph, Mr. Carey and Judge Delaney are of the opinion that the witness should be limited. Mr. Park, Mr. Ferry, Mr. Glass, Mrs. Katzenbach and Mr. Taylor, believe the witness should have wide latitude. Mr. Stanger.

MR. STANGER: Mr. Chairman, I believe the witness is trying

to take advantage of this Committee for propaganda purposes. However, this is a Constitutional Convention. If he is a citizen of the State of New Jersey, being responsible for these attacks he is making, to which this Committee knows I do not subscribe, I still feel that since he is a citizen who has been invited here to express his views that we should hear him out.

CHAIRMAN: Now, we've had a wide expression of view among the Committee. It's obvious, I think, that the majority of the Committee wish the witness to have the privilege of continuing with his statement as he wishes to present it.

As Chairman, I request that we let him proceed and get to the end of it. The majority of the Committee have so expressed that desire. I therefore declare that the witness may proceed in his own manner, with the admonition that we have other witnesses to be heard. Won't you please remember that we do have the right to limit the time which we would allot to you. I ask you please to proceed so that we may hear other persons, including some people who wish to be heard on your viewpoint, also.

MR. DEAN: I appreciate the opinion expressed by the Committee and will proceed as rapidly as practical. (*Continues reading*):

"The Federal Executive Order of March 22, 1947, under the provisions of which employees have been summarily dismissed from federal service because the Attorney-General declares that their 'loyalty' is 'questionable' is another dangerously foreboding development which may be added to the most outrageous of all trends toward the police state and thought control, the Congressional Un-American Activities Committee. This body, whose constitutional legality is at best questionable and at worse non-existent, has in the most arrogantly arbitrary fashion characterized individuals and organizations as 'suspect' and 'dangerous,' and thereby presented them before the American people as 'subversive.' These accusations are levelled most sharply at us, the Communists, despite our pronouncements and documents that we do not advocate the overthrow of the government by force and violence and that we do uphold the United States Constitution, and also despite the fact that the Supreme Court of the United States has on at least three occasions (in the cases of Schneiderman, Dejong and Bridges) ruled that there is strong evidence to indicate that the Communist Party does not advocate such force and violence. It is clear that if such deliberate distortions can be directed at us, that they can be likewise directed at any individual or group chosen by bodies like the Un-American Activities Committee. This, of course, has already been done to a great number of organizations which Mr. J. Parnell Thomas and his committee evidently do not like. And while we do not advocate force and violence, we would remind our slanderers that the great American nation was born precisely on that basis. And we would further remind them that the great Republican, Lincoln, and the great Democrat, Jefferson, had some things to say about this matter!

The present Convention has the obligation of assuring the practice of complete freedom of will on the one hand, and the forthright punishment by law of those who individually or in concert deny or prevent such practice, on the other. The Communist Party insists that democracy is not a static thing. Democracy in order to survive must consistently grow, extending its benefits in ever-widening circles and encompassing an increasing number of individuals. The rights and privileges of persons are so frequently talked about that they are too often taken for granted. The

rights and privileges of common men were attained through struggle, and like the fruits of all victory can only be maintained by constant vigilance. Our State Constitution must be the medium in which this necessary vigilance will find legal support. We maintain that there is no place in the Constitution of the State of New Jersey for clauses or provisions which might give any branch of State Government authority to deny specific rights and privileges to any person or group of persons for reasons of, or stemming from, their race, color, religion, creed, or political beliefs.

We present this proposition, not because it is a new concept, but rather because of the aforementioned developments in governmental practice in our country and because a resolution characterized by the *New York Times* of July 2, 1947 as 'an anti-Communist resolution' was submitted to this Convention by Mr. Percy Camp, a delegate from Ocean County. It reads, and I quote from the *New York Times*: 'No person who shall sponsor or espouse any doctrine to overthrow by force the present form of government in this country or State shall (a) hold any public office, trust or position; (b) be awarded any public contract, work or assistance whatever; or (c) be entrusted with any public record, document or property of any nature of this State or any of its subdivisions.' End of quotation. The Communist Party of New Jersey stands unalterably opposed to that resolution, and we find ourselves unable to understand the reasoning that could justify the submission of such a resolution to the Legislative Committee rather than to this, the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. We likewise find it difficult to find any justification for the fact that, to the best of our knowledge, Mr. Camp's resolution was not reported in the local newspapers. We are left to assume that the Legislative Committee might be presumed more prone to accept such a proposition once couched in suitable legalistic subterfuge.

It is to be hoped, and we Communists shall actively work toward the end, that all examples of the aforementioned restrictions will very soon be declared unconstitutional. Meanwhile, it behooves the delegates of the Convention to guarantee that the fruits of their labor and deliberations shall in no way reflect the hysterical atmosphere created by those who fear freedom and liberty, but on the contrary shall sharply express much needed confidence in the expansion of democracy into a living reality. We Communists place stress upon these problems not merely because it is in the name of an actually fictitious danger which we are accused of constituting, that these repressive measures are established, but mainly because such continued practices will inevitably serve to place the majority of people outside the realm of rights and privileges due our citizens because their opinions may differ with those of the minority in power. If the Communist Party can be harnessed by attempts to drive it from legal existence, then any minority party may become subject to the same circumstances. Let the Republican Party recall the vicious slanders through which it had to struggle during the early days of its existence! And let all men recall the infamous alien and sedition laws in the middle of the last century! It should by this time be clear to all that history records no attack upon Communists, or earlier progressives, which was exclusive. Such attacks invariably spread to ever larger sections of the people. In today's world that spells fascism.

In addition to the foregoing problems there is another which must receive the most serious consideration of this Committee and the Convention. We speak here of the weakest link in all of American democracy, the rights of Negro Americans. The rights of all minorities are constantly under attack from one source or another, but the plight of our Negro citizens is no doubt our greatest shame. If we would know the extent to which freedom and liberty have truly been woven into the fabric of our democracy, it is in this area of liberties that we must search. For at no time in our entire history have Negro citizens been free to practice the rights and privileges ostensibly guaranteed all citizens in every forward-looking American document on human rights. We Communists do not profess to be unique in posing this problem, but we do presume an un-

challengeable consistency in actively applying ourselves to it. This is so because we recognize that the oppression and discrimination against Negro Americans is the primary lever with which the rights and privileges of a majority of Americans may be pried loose and eventually destroyed.

Here again we emphasize this situation because recent history has unfolded a series of lynchings and other terroristic practices against Negroes which, unchallenged, will serve the same purpose for backward-looking Americans as the pogroms against the heroic Jewish people served for the Hitlerites and other fascists throughout the world. As in other countries, this spells fascism!

Seeing all of these problems together, each as a component of the whole, it becomes clear that our State Constitution has an historic task to perform. It must state propositions in such a way that the meaning is clear and definitive. It must irrevocably indicate the intention of the people of New Jersey to extend democracy to reach the whole of our citizenry. To do otherwise would be to court the arrival of reaction and fascism.

It is with these things in mind that the Communist Party of New Jersey proposes the following amendments or additions to the 'Bill of Rights,' Article I, Rights and Privileges, of the present Constitution of the State of New Jersey:

1. Addition of a separate section as follows:

'The right of labor to organize and bargain collectively through representatives of their own choosing is guaranteed.'

2. Include in the present paragraph 5, which deals with the right of free speech and free press, the following clause:

'The right of peaceful picketing shall be considered an incident of the liberty of speech and of the press.'

3. Addition of a section dealing with discrimination, as follows:

'a. No person shall be denied the equal protection of the laws by this State or any subdivision thereof or by municipality.

'b. No person shall because of race, nationality, color, creed, religion, or political belief or opinion be denied, deprived of, or subjected to any discrimination or restraint with respect to personal rights, civil rights, right of employment, or any right or privilege contained in this Article, by any other person or by any firm, corporation, institution or association, or by this State or any subdivision or agency thereof, or by any municipality. Any person shall have the right to restrain the violation of this subsection of the Constitution by suit brought for this purpose in the appropriate court. The Legislature shall, in addition, enact legislation to insure effective enforcement of the principles declared in this section, and to guarantee to all persons enjoyment of rights and privileges herein conferred.'

4. Addition of a section enumerating the rights enunciated by Franklin Delano Roosevelt in his famous Economic Bill of Rights, as follows:

'The right to a useful and remunerative job in the industries or shops or farms or mines of the nations;

'The right to earn enough to provide adequate food and clothing and recreation;

'The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

'The right of every business man, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

'The right of every family to a decent home;

'The right to adequate medical care and the opportunity to achieve and enjoy good health;

'The right to adequate protection from the economic fears of old age, sickness, accident and unemployment;

'The right to a good education.'

5. Addition of a section on the rights of women as follows:

'The word "men," as used in this Constitution, shall be construed to apply equally to women, provided that nothing contained in this Consti-

tution shall be construed to invalidate or prevent passage of legislation advancing and safeguarding the special interests of women.'

The Communist Party of New Jersey further wishes to express its general endorsement to proposed changes to Article I submitted by the New Jersey State Council of the Congress of Industrial Organizations, the State Federation of Labor, the League of Women Voters of New Jersey and the Joint Committee on Constitutional Bill of Rights. The Communist Party is of the opinion that the inclusion of provisions prohibiting discrimination for reasons of political belief is essential to vital democracy."

CHAIRMAN: That completes the witness' statement. Are there any questions from the Committee?

MR. STANGER: Mr. Chairman, I have no question, but lest our silence should be misunderstood and might be looked upon by some as a degree of approval, I for one, and I think the Committee as a whole, resent the unfair attack upon an honorable member of this Convention, Judge Camp of Ocean County, and I hope the witness understands that I do not approve of it in any way. I think it was very unfair and I think the Committee has been taken advantage of in the statement that he made about Judge Camp.

MR. PURSEL: I'd like it on the record that I don't approve of anything that the witness said or of his right to speak here.

MR. PARK: May I ask Mr. Dean a question? I think you told us at the outset that your party does not advocate overthrowing the government by force. I think the provisions of Judge Camp's resolution submitted here was directed only against those individuals who do advocate the overthrow of the government by force.

MR. DEAN: That is correct.

MR. PARK: Therefore you have no concern in that particular point?

MR. DEAN: My concern in that particular point, as mentioned in the statement, is the fact that the *New York Times*, which I think all of us can consider an institution, referred to this resolution as an anti-Communist resolution.

MR. PARK: Then your attack is upon some editorial writing rather than upon the merit of the particular resolution?

MR. DEAN: I think it will be recalled that it was pointed out here that we are frequently accused of advocating the overthrow of the government by force and violence; therefore, we are concerned with the fact that whenever such propositions are offered that they are offered within the realm of this accusation. Consequently, we feel it very necessary to oppose any such recommendation.

MR. PARK: I won't pursue you any further.

MR. RANDOLPH: I think it is contrary to the usages of the Committees of this Constitutional Convention to have expressions of opinion representing political parties. I don't think there are expressions of opinion coming from the Republican Party or the Democratic Party, as such, and at the proper time I would like to

move that the communication which the gentleman has read, that those references as coming from the Communist Party, be stricken out, and that the paper which he has read be given the expression of a certain committee. I don't think that this Committee on Rights and Privileges desires to hear the opinion of any political parties as such.

MR. CAREY: I second that motion. The man who has been speaking to us has avowed in very plain English that he is a Communist identified with all the Communist movements in the country, the movements that have been condemned by the Justice Department of the United States and all the United States courts as being inimical to everything that is American. I think that his presence here is just one of their methods of endeavoring to get a hold. I will second the motion provided you permit me an amendment. My amendment would be simply this: that his entire speech be stricken from the record.

MR. PARK: I'd like to speak in opposition to that. I appreciate the sentiments of the two co-workers in this Committee, but the fact does remain that these proceedings have been taken down; the fact does remain that it was the expression of the opinion of the witness, and the fact does remain that he says that he is the representative of the Communist Party. I think it would not be a matter of wise policy to strike it from the minutes. The Committee may decide what it wishes on future hearings. But what has already been said cannot be wiped from the mind or memory of the listeners. It ought to stand. You don't have to believe it, you don't have to like it, but it has already been said.

CHAIRMAN: Do any other members of the Committee have questions for the witness or any other expressions of opinion on the current subject of discussion?

As Chairman, I would like to say that we scheduled an open public hearing. We didn't restrict the hearing to any particular citizen or group of citizens. The question of political parties has been raised. I don't believe we restricted it, although it is true that we've had no expressions of opinion from other parties as yet. I want properly to interpret the sense of the Committee, but I do think that when the Committee passes judgment on Mr. Randolph's motion, it should keep—

MR. RANDOLPH: I'll make the motion at the proper time.

CHAIRMAN: You're not making it at this hearing, sir?

MR. RANDOLPH: I do intend to make it, but I refuse—

CHAIRMAN: Today, in this room, now? When do you intend to do it?

MR. RANDOLPH: I desire to move, Mr. Chairman, with reference to the communication from Mr. Dean, as coming from the

Communist Party, that we do not receive it as such, but that we receive the communication as coming from him or from any committee that he desires to insert. I don't think it is the intent of this Committee or of the Convention to hear petitions from political parties, and I so move.

CHAIRMAN: Judge Carey, a moment ago you made a second to the motion, with an amendment that it be stricken from the record. Mr. Randolph, did you say you did not care to accept the amendment? As I understand it, Mr. Randolph has made the motion to receive this testimony, but rather as an individual expression from Mr. Dean. I think Judge Carey had in mind seconding that motion. I don't know. Mrs. Katzenbach, do you have something to say at this time?

MRS. KATZENBACH: Mr. Chairman, I believe very definitely that this Convention was prepared to hear the arguments of any interested citizen or citizenry of the State of New Jersey. I would feel that in accordance with our treatment of any other member of the citizenry of the State of New Jersey, that the report be received and placed in the record as we would any other.

CHAIRMAN: Does any other member of the Committee wish to express himself? Mr. Ferry.

MR. FERRY: I merely wanted to say that we're gathered here today to try to prepare a Constitution for all the people of New Jersey. I don't agree or subscribe to what this witness has said, but how can we do otherwise than let him have his say here today? This is an open hearing. As you said very properly, it hasn't been restricted in any way, and I certainly should feel very sorry to see a motion passed by this Committee restricting this man's speech. He has already said it. We cannot recall the words. Why not file his statement, as Mrs. Katzenbach suggested, and close the incident?

MR. STANGER: Mr. Chairman, I move that the motion be laid on the table because we are now sitting in hearing and not in executive session; therefore the motion should for the present be laid on the table until we meet in executive session and then be considered by the Committee.

MRS. KATZENBACH: I second that motion.

CHAIRMAN: Mr. Park, will you step forward a moment? Just a moment . . .

(Discussion)

CHAIRMAN: All right, Mr. Randolph, what did you say? My understanding now is that Mr. Randolph has withdrawn his motion, Mr. Carey has withdrawn his second, and now we have Judge Stanger's motion. Does anyone second it?

(Motion seconded)

CHAIRMAN: All in favor, please say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed?

(Silence)

CHAIRMAN: All right, Mr. Dean, you're excused. Thank you. At this time I have the name of Fred W. Martin. Mr. Martin do you wish to be heard at this time?

MR. FRED W. MARTIN: Mr. Chairman, and members of the Committee:

We have submitted our proposal, as required by your rules and regulations. I am representing the National Association for the Advancement of Colored People here in the State of New Jersey. Our president, Reverend Hardge, for the State Conference, is also here. I am chairman of the committee created to come and discuss a few of the problems.

I may say that we're not Communists, we are not Republicans or Democrats. We are citizens here to discuss with you some of the most vital problems that affect not our group alone, but all people in the State. These problems are very vital. I want to congratulate the Chairman of this Committee, as well as the Chairman of two other Committees at which we have been present today, upon the manner in which they have been handling the problems. It seems that we have a very democratic discussion.

Members of the Committee, I'm not a lawyer and I do not come with specific recommendations as to whether or not our proposals dealing with civil rights ought to be in the Bill of Rights or whether it should be in the Constitution. But I am very definite in stating that certain minorities in the State suffer certain problems, and we, as citizens of this State, would be more than happy to see our State take the lead, since it is writing a new Constitution, in letting it be a model for all other states in the Union, notwithstanding that New York, Ohio, Connecticut, and other states have made some very definite contributions in behalf of citizens of all color. We have just had discussions with the Committee on the Executive, Militia and Civil Officers. I served in the first World War; I guess we're going to have wars as long as you're going to have two men on the face of the earth. I guess my son will serve in the next one. Anyway, we're headed toward universal military training. I would like to say very definitely that Connecticut has just passed a law wiping out the separate militia in the State of Connecticut.

We fully realize that this is a Constitutional Convention and that we cannot come here with all the problems affecting any group that should be left for legislative acts. But we also fully realize that the basic and fundamental law of our State and all other states cannot

be changed any night that the Legislature sees fit to change it. I may say that the National Association for the Advancement of Colored People in this State lacks confidence in some of the legislative acts, as well as in some of the leading politicians of our State. We made trips on top of trips at the time revision of the Constitution was proposed, and subsequently we received absolutely nothing but promises. We come again today still having faith in the democratic process. Since we are now holding up to the countries of the world that the democratic way is the right way and the correct form of government, we ask you to let us have that form of government in America. First and above all, we ask that New Jersey lead the way in that democratic process.

Perhaps some of you may not realize that today we have in this State an undemocratic system of education. I fully realize what the Commissioner of Education and Mr. Bustard are doing. It is very fine work. If we adopt a clause on rights and privileges, why cannot some of these provisions be included, such as regards the militia, or education, and thereby wipe off the whole problem? We go so far in this State that a certain group will hold this State out now as the "Georgia of the North." Why? Because we practice many of the undemocratic systems and we have many of the undemocratic policies in this State that we find in some of the far southern states. For example, in education we maintain in this State, at the expense of the taxpayers and citizens, a segregated institution that we call the Bordentown Manual Training and Industrial School for colored boys and girls only. We see no need for such an institution, even though it were an institution that had all the equipment and faculty that any other institution of that type had. We see no reason in this State why we should have a separate militia. We see no reason in this State why we should grant franchises to insurance companies to come and operate in this State, and at the same time have them say, "Mr. Martin, you're colored. We cannot insure your house, we cannot insure your automobile. Not that we have anything against you, but the jury, the courts, are unfair to you."

We ask you to put into the basic law of this State something that will give equality to all people. I respect the speech of the learned doctor from the Drake Schools, but I know from my personal knowledge that the schools he represents in that chain do not accept colored students. We certainly cannot say that that is a democratic principle and we certainly can't say that that is what our boys and our girls gave their services for in this great second World War.

Gentlemen, we come to you, not fighting and trying to tear down the institutions under which we are living, but we come to you asking you to further the democratic principles in the State of New Jersey and let New Jersey go on record as being one state in the East

that's got an ideal constitution for other states to use as a model. I thank you.

CHAIRMAN: You've heard the testimony of Mr. Martin. Are there any questions from members of the Committee?

MR. PURSEL: Mr. Martin, will you explain what you said about insurance on cars and houses? I didn't understand that.

MR. MARTIN: I have in my files today a letter from an insurance company in Boston. I think it is a mutual company, but it's true everywhere. They said, "On account of your tenants now being colored, we can't insure your property any longer." It's a known fact in this State. It applies also to liability and property damage. We passed this compulsory law that if a man is once in an accident, he must carry insurance. Sears-Roebuck and a few other companies came in, but it is pretty hard to find an insurance company that wants to take a colored risk. On my policies for the last 30 years they just made a statement, "Color: not stated." I deal with one of the biggest brokers in the State and consequently he's pretty shrewd on that.

CHAIRMAN: Any other questions for Mr. Martin?

MR. RANDOLPH: Does that include all insurance?

MR. MARTIN: It does. That includes all insurance: life, health, accident, liability—all insurance. All of the insurances of this State discriminate.

CHAIRMAN: Do you have a question, Mr. Carey?

MR. CAREY: You're a fine, cultured, splendid type of citizen. I hope you will do this,—will you write out what you think ought to be said to express the points that you have proposed to us here today, so that we can have it for our consideration, as you write it, at our next session? I think you will be doing a fine thing for us. You have made one of the best speeches I have heard at the Convention.

MR. MARTIN: Thank you Judge Carey; I appreciate that very much. But you don't know how I have to be careful every day that I live. I have to be very careful that I don't bring indignities and insults upon my poor wife and my child. I may step over the bounds when some party who is unable to speak English throws me out or insults me, and I'm thrown in the jug. I've never been in the jug but I'm always afraid of going there. Above all are my wife and my children. I can't stand having them insulted.

CHAIRMAN: I think what Judge Carey had in mind, Mr. Martin, was that perhaps you would have time to reduce to writing your specific recommendations to the Committee on Rights and Privileges as they pertain to Article I, so that we can study and examine them and give full review to your ideas as expressed here today. Are there any other questions? . . . Mr. Park.

MR. PARK: You started out by saying that you are not a lawyer. I was wondering if you have any men in your organization who have given any technical study to this particular problem? We have certain proposals for the solution of some of the questions you have presented, and we regret that while the witnesses here were frank, they were not able to give us their views upon the technical aspects. Do you suppose you would be able to call on behalf of your cause any members of the bar who have given any study to this problem from the standpoint of its technical aspects?

MR. MARTIN: The Executive Committee asked that this morning. It wanted to pin me down to an answer as to whether or not I would agree that if they cooperated with you on this New York clause, whether they could put this proviso in the Militia Article. My answer to that is this: I am not a lawyer and I'm afraid to commit myself to the Committee. But we have good legal advice on both sides of the river, and I'd like to get back to it.

CHAIRMAN: Any other questions? . . . You're excused Mr. Martin. Thank you very much for your expression and views.

At this time we have on the agenda the Reverend E. S. Hardge.

REVEREND E. S. HARDGE: Mr. Chairman, members of the Committee: Mr. Martin has just about covered all that we of the National Association for the Advancement of Colored People wish to propose. Of course, as you know, we represent 31 branches in the State of New Jersey and we are strictly a civil rights organization.

COMMITTEE MEMBER: Reverend Hardge, what position do you hold in the organization?

REV. HARDGE: I happen to be the State President of Branches. We want it clearly understood that we represent the colored people. We do not seek any special privileges. We just want to be considered as citizens, first class citizens, of the State of New Jersey and treated as such. I think it is a sad reflection on our country as well as our State to be in the ironic position of teaching democracy to the world while we are not practicing the same in our own backyard. What Mr. Martin said in reference to the state militia and also of the educational system of our State is true. All of us will agree, those of us who know the facts in the case. Our present system in this state in education is placing an inferiority complex upon every colored boy and girl where these practices are carried out, and we hope that this Committee will insert in the Constitution the thing that we have proposed. Thank you very much for giving us the privilege of coming here today and making our position clear.

CHAIRMAN: Any questions? . . . If there are no questions I'll excuse Reverend Hardge and thank him very much for his appearance and testimony.

If there are no objections, the Committee will take a five-minute

recess and we will reconvene in about five minutes and hear about six additional witnesses who have asked to be heard today. We have a few more witnesses, so I'm sure that if each witness will proceed in an expeditious manner we can hear everyone and still adjourn the hearing at a very reasonable time.

(*Recess*)

CHAIRMAN: We will resume . . . Mrs. Zwemer.

MRS. RICHARD ZWEMER: Mr. Chairman, and members of the Committee:

I'm the vice-president of the Consumers' League of New Jersey, organized in 1900 for the improvement of working conditions of men and women. I wish to state our position with reference to changes that may be proposed to the Bill of Rights or to the Constitution concerning laws containing distinction between men and women. For a number of years a constitutional amendment has been introduced in the New Jersey Legislature that "men and women shall have equal rights throughout the State." This is the so-called "equal rights amendment" which our organization has always opposed. We believe that an equal rights amendment is unnecessary and would prove harmful to the women of the State. We recommend that the rights of men and women be equalized by specific legislation to meet specific needs as they arise. This is the present method of removing sex distinction and is in accordance with the Constitution, especially Article I, paragraph 1 of the Bill of Rights, and of Article X, paragraph 1, of the Schedule. Article I, paragraph 1 of the Constitution reads: "All men are by nature free and independent, and have certain natural and unalienable rights . . ." This paragraph has been interpreted by courts to protect all men, that is, "men of every description, young or old, male or female," in the case of *State v Post* (1845). Judicial decisions throughout the years have held that the word "men" in the Bill of Rights includes women.

A body of statutory law has been built up since 1844, removing common law limitations on women. A wife may be the guardian of her children, make wills and contracts, and have a separate bank account from her husband. Women have political rights. They may vote, serve on election boards and party committees, and hold office. In fact, in granting the privilege to hold public office or employment, New Jersey has prohibited discrimination because of marital status. It is required that female teachers holding similar positions and employment with similar training and terms of service must be paid compensation equal to that paid to male teachers. These and other civil, political, economic and legal rights were secured under the present Constitution. The process is a flexible one. As a specific situation arose, specific legislation was passed. A blanket equal

rights law for women was not necessary to achieve these accomplishments.

In order that these laws may not be jeopardized in the proposed Constitution, we propose that the provisions of Article X, paragraph 1 of the 1844 Constitution be retained. That simply says that the common law and statute laws now in force, not repugnant to the Constitution, shall remain in force.

I don't think this Committee probably has the Schedule, but it goes along with it. Under this provision, the courts upheld laws adopted prior to the enactment of the Constitution of 1844 and which were still in effect and governed their decision until changed by the Legislature. By continuing this provision in the proposed Constitution, we can be assured of the retention of that very useful clause in the *Revised Statutes, section 1:1-2*: "Whenever, in describing or referring to any person * * * (the) masculine gender is used, the same shall be understood to include and to apply * * * to females as well as males * * *."

It is our position, therefore, that by retaining the provisions of Article I, paragraph 1 of the Bill of Rights, and of Article X, paragraph 1 of the Schedule, we will keep these gains that women have made while at the same time we will retain the specific protection which we have acquired. We're therefore opposed to a blanket equal rights amendment which outlaws at one stroke all the laws for the protection of wives, widows, and working women.

Under New Jersey law at the present time, the husband is responsible for the support of his family. We believe there are few social workers who would be willing to throw away the safeguard at this time. In the future this might change. But we do not think at this time that the Legislature would see fit to remove the obligation of the support of the family by the husband. At any rate, the Legislature can make the change without an equal rights amendment to provide for joint liability for them. But the adoption of an equal rights amendment would immediately absolve the husband from his responsibility and deprive mothers and children of this protection, without adequate safeguard.

Then there is a group of laws which have been passed for the benefit of widows, especially in the matters of inheritance and workmen's compensation benefits: the right to have exempt personal property up to \$200 value set aside for herself and family; the right to have unpaid wages due her husband at the time of his death up to \$75 without formal administration, and—this is important—the right to have continued to her during her occupancy of the family home the exemption of property from creditors' claims allowed her husband in his lifetime, and particularly the right to receive death benefits under the Workmen's Compensation Act, because it states

there that "dependency shall be conclusively presumed" as to decedent widow to get claims on account of dependency. These laws, and others for the benefit of widows, would be wiped out if an equal rights amendment were adopted.

And, finally, there's that whole group of protective legislation for working women. These include regulations on hours of work, minimum wages, industrial homework, the 54-hour week, and the day of rest per week. Certain Department of Labor standards prohibit women, for example, from handling any dry substance or compound containing lead in any form in excess of two percent. Among other organizations, the Consumers' League has worked for years to get these laws on the statute books. Under the minimum wage law, orders have been issued to fix the minimum wages for laundries, dress shops, beauty shops, and the cleaning and dyeing trade. None of them is under the federal act because they are intrastate. What would be the result if the equal rights amendment were to be adopted? Is it not clear that the women would lack any protection from long hours and low wages except through the minority of employed women in this State who are in a union? It might be answered that the Legislature may only pass laws extending minimum wage and hour regulations to men. We cannot be optimistic over such a solution. For many years we have worked to extend the minimum wage laws to men in intrastate trade, so far with no success. With opposition supplied immediately upon the adoption of an equal rights amendment, we fear it would be a long and uphill struggle before protective legislation would be extended to men. In the meantime, women will be deprived of protection.

In conclusion, we believe that the adoption of an equal rights amendment would be a calamity for the wives, widows and women workers of the State. The Legislature should not be prohibited by the Constitution from making laws containing sex distinction. As changes occur in the status of women, the laws can be changed to meet the situation. We respectfully request the Committee to scrutinize carefully all proposals which would abolish protective legislation for women and we urge that the present sensible method of legislative enactment be continued. Respectfully submitted.

CHAIRMAN: You've heard the statement of Mrs. Zwemer. Are there any questions on the part of the Committee? . . . Thank you, Mrs. Zwemer.

At this time, Mrs. W. B. Heinz of the League of Women Voters of New Jersey wishes to be heard. Mrs. Heinz.

MRS. W. B. HEINZ: Mr. Chairman, members of the Committee:

Mrs. Zwemer has enumerated the reasons why the League of Women Voters as well as the Consumers' League is opposed to the inclusion of a blanket equal rights provision in the new State Consti-

tution. We, of course, are women's organizations and we are not supposed to think of women in any sense as inferior to men, but we do that because of the status which women occupy in their general way of living. A blanket equal rights amendment is contrary to their best interests and would also involve litigation which might take a long period of time. I don't think I need to go further into the reason, but I do wish to put the League on record on this matter.

CHAIRMAN: Thank you, Mrs. Heinz. Are there any questions? . . . If not, we'll excuse Mrs. Heinz.

Mrs. Ralph Barbehenn, legislative chairman of the New Jersey State Federation of Women's Clubs, is scheduled as the next speaker, But Mrs. Heinz has told me that Mrs. Barbehenn has left and will not speak at this time.

We now have the name of Miss Gaetana Mahan of the Communist Party of New Jersey who wishes to be heard at this time.

MISS GAETANA MAHAN: Considerable attention has been directed to the so-called "equal rights amendment," which is sponsored by a small group of extreme feminists who have won the support of employers' organizations and rich women. Many sincere women are confused by this misleading "equal rights amendment."

The Communist Party has always been a champion of equality for women. Therefore, we join with the labor movement and all progressive women's groups in firm opposition to the inclusion of any provision offered under the label of "equal rights" which would abrogate legislative and other necessary safeguards for women, to meet their special needs which were won only after long years of effort.

There are many inequalities which we can all agree should be removed from women today, but not by a blanket amendment which sweeps out all the gains made by women. Existing inequalities of law affecting men and women as such are so complicated in character that only specific legislation can reach them effectively. We believe that blanket legislation attempting to cover all such questions will aggravate existing inequalities and substitute new ones. It would, instead of establishing legal equality, breed great wrongs and sufferings and create, in vital matters, still greater legal inequalities.

Women are definitely hampered physically. To offset these handicaps, women require special protective legislation for potential and actual mothers.

Women in industry usually carry a double burden, their domestic tasks in addition to their day's work in a shop or factory. To consider that a woman thus burdened starts out on an equal basis with a man worker is harmful nonsense. All of these handicaps must be dealt with, not ignored or brushed aside by willful and wishful thinking.

A scientific consideration of the problem, as well as a human approach will result in the conclusion that women as workers need protection and safeguards. This does not mean that women cannot do practically all the tasks which men can do, especially in mechanized industry. But they must have proper safeguards. We must not place on women a heavier load than they can carry. It will injure them and the generations to come.

We therefore offer the following addition to a section on the rights of women (*reading*):

“The word ‘men’ as used in this Constitution shall be construed to apply equally to women, provided that nothing in this Constitution shall be construed to invalidate or prevent passage of legislation advancing and safeguarding the special interests of women.”

CHAIRMAN: You’ve heard the witness. Are there any questions from members of the Committee? . . . If not, you’re excused. Thank you, Miss Mahan, and thank you for your testimony.

Is there anyone else who wishes to be heard today? Tomorrow at 10 o’clock and at 1:30 P.M. we have additional hearings on Article I, Rights and Privileges.

(Motion to adjourn)

CHAIRMAN: Moved that we adjourn. All in favor say “Aye.”

(Chorus of “Ayes”)

CHAIRMAN: Opposed?

(Silence)

CHAIRMAN: So ordered.

(The session adjourned)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 9, 1947

(Morning session)

(The session began at 10 A.M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

CHAIRMAN JOHN F. SCHENK: Members of the Committee, the minutes which you have just received are for your study and are tentative drafts. We'll take them up next week at our Tuesday meeting. That's the minutes of the fourth meeting. Now, what are your wishes as to the minutes of the third meeting?

COMMITTEE MEMBER: I move the minutes of the third meeting be approved.

COMMITTEE MEMBER: I second the motion.

CHAIRMAN: It has been regularly moved and seconded that the minutes of the third meeting, which you received yesterday and examined last night, shall be approved. Any remarks? If not, all in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed?

(Silence)

CHAIRMAN: The motion is carried.

Is there anyone else who wishes to register with the Secretary so that we will have your name in case you wish to appear today before the Committee? Register here, at the right of the chair, please.

This is a hearing of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions and is called to hear citizens on Article I, Rights and Privileges. The Committee has had a schedule of hearings on all the work assigned to it. This hearing today is to be on Article I, Rights and Privileges. Now, if there are any citizens present who wish to be heard on other subjects, we must ask you to be patient and let us clear our schedule of those who are appearing on the subject matter which we have scheduled for today, namely Article I.

At this time I wish to call Reverend Harry L. Bowlby, East Orange, who wishes to be heard. Is he present?

Will you speak into the microphone so that everyone can hear, please?

REVEREND HARRY L. BOWLBY: Mr. Chairman and members of the Committee on Rights and Privileges:

I have this proposal which is being made by the Lord's Day Alliance of the United States. First, I have this provision which is in the present State Constitution and which is identical with Article I, Section VII, paragraph 2—with the exception of the change from "President" to "Governor"—of the Constitution of the United States, respecting the retention of the civil institution of Sunday in the revised State Constitution. Said provision is in the State Constitution in Article V, paragraph 7, and it is on the approval of bills by the Governor.

Second, our proposal is—the State being under obligation to defend, protect and preserve the civil institution of Sunday—we request your honorable Committee to make a recommendation for the strengthening of the restraints on the invasion by predatory powers and enterprises and to recognize national, weekly bless-day Sunday.

Now, Mr. Chairman and gentlemen of the Committee, as the agency of a score of evangelical denominational bodies, representing throughout the country fully 20 million communicant church members and an additional number of adherents, approximately 10 million, we hereby make earnest and respectful request of you to keep fully intact that section of the present State of New Jersey Constitution which is of the pattern of the Constitution of the United States, Article I, Section VII, paragraph 2. This provision, as I have already stated, relates to Sunday which is a civil institution and is pertinent to the fact that this institution is entitled to the safeguards known as Sunday laws. The State and the Nation are under bounden obligation, as I have expressed in the proposal, to maintain the integrity of that institution and to protect it against the assaults of a brazen commercialism and the interference of those things which rob men of their rights to rest. Business enterprises operating unnecessarily on Sunday invade the sacred day of the week which all Christendom recognizes as the Christian Sabbath.

Now, in addition to that, we wish to call your attention to this fact. On February 29, 1892, the United States Supreme Court handed down an opinion which was the unanimous opinion of the court, written and presented by Mr. Justice Brewer, in which he drew the conclusion and so stated it, that the United States of America is a Christian nation; and in this decision, just before he reached his final word, he said, "All the traditions of our nation when as yet we were not a nation, from the earliest of Colonial times to the

present hour [that is, February 29, 1892] shows conclusively that this is true." Then he cited these facts. He said "Here we have in unofficial utterances and declarations, additional to the official utterances of the nation, the fact that our Congresses are closed on Sunday, our courts [the United States Supreme Court and other courts] and businesses generally closed" and, said he, "The churches have this day for the purpose not only of contributing to the current expenses of their religious institutions but also," said Mr. Justice Brewer, "the gathering in of the monies to send abroad and for the promotion of their great benevolent and Christian enterprises."

Now, Mr. Chairman and gentlemen of the Committee, Sunday is the Christian Sabbath and this country, from the time the Pilgrims landed on Plymouth Rock to the present hour, has been considerate of the highest court of the land. This civil institution here is the same, as I said a few moments ago, as that which appears in the Constitution of the United States. And well did the founding fathers put it there, and well did those that made this Constitution which is still intact here in our State, more than 100 years ago, take note of that fact! We know that juvenile delinquency is abroad in the land. We know that if ever there was a time when Christianity itself should be asserted and civil institutions, the outgo of that great religion, should be made practical and efficient in our American life, that day has come!

If you read this morning's papers, or this evening's papers, or listened to the radio, you heard what Mr. Gromyko had to say yesterday about his ideology, and he virtually said "Take this or none." We'll have Christianity and the civil institutions which have arisen out of it in our great republic which is set within a democracy, the United States of America. What are we going to do? Are we going to stand by these great institutions or are we going to allow some foreign ideology to come in to say: "You held the state for something more than three centuries in the United States, but Communism now supplants Christianity and the free institution for which it stands"?

Mr. Chairman, delegates, members of this Committee, there is much more I can say, but let me in closing add this word. We in this State, this Garden State, from which some of us have sprung, indigenous to the soil—I, myself, was born in Hunterdon County and most of my relatives live in this State; I suspect the majority are still in Hunterdon County or Warren—we love this little State. As Daniel Webster once said of the little college of Dartmouth, in her beginning, "Yes, it is a little college, but there are those of us who love her."

We love this State; we love her traditions; we love to think back upon the day when some of us sat in Princeton under one of the

greatest men this country has ever produced and half of whose life was lived in this State—Woodrow Wilson, son of a Presbyterian minister who always stood for these things. I am not boasting, Mr. Chairman, but gladly do I say that I have in his original handwriting the only copy in which he said, “Compulsory chapel services will not be discontinued at Princeton University for these services add flavor to the day’s appointments.” The civil institution of Sunday adds flavor for the rest we need, for refreshing of the labor group—and who of us are not sons of toil, daughters of toil? Further, the day that made possible our civil institution of Sunday was none other than the sacred day of the week—the Christian Sabbath—and this State and this Nation were largely founded upon that rock along with the rock of sanctuary.

Mr. Chairman and members of your Committee, I wish to express my thanks to you on behalf of the Board of Managers, as well as myself as General Secretary, for your courtesy, and trust that these proposals which I have made here today will have your careful consideration and, we trust, your favorable recommendation to the Constitutional Convention.

CHAIRMAN: Are there any question by members of the Committee? . . . If not, you are excused Mr. Bowlby, and thank you for appearing and giving us your views.

REV. BOWLBY: May I, before I go, just read this?

CHAIRMAN: Yes, sir.

REV. BOWLBY: This is on Article V, paragraph 7. I want to read it to you. The caption is “Approval of Bills.” (*Reading*):

“If any bill shall not be returned by the Governor within 5 days, Sundays excepted . . .”

In other words, as I said to President Roosevelt and two other presidents, “There is one day in the week when you call no man master; that day is yours, Sunday.” They said “That’s right.” Not only in the Constitution of the United States, very true, of course, but here it is in our State Constitution. I read it again. (*Reading*):

“If any bill shall not be returned by the Governor within 5 days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it unless the Legislature by their adjournment prevent its return, in which case it shall not be a law.”

CHAIRMAN: Thank you, sir.

Is Mr. James Kerney here at this time? If not, we’ll go on to the next speaker, and he will be heard when he returns.

Mrs. Carpenter, New Jersey Federation of Business and Professional Women’s Clubs.

MRS. CARPENTER: Mr. Chairman, delegates and members of this Committee:

We are very happy to have this opportunity to appear before you today. I represent the State Federation of Business and Professional

Women's Clubs, and I will read a statement that has been prepared (*reading*):

"Article I under Rights and Privileges refers to 'men,' 'people' and 'persons.' There is no mention of 'women.' Usually when the word 'man' is used, it includes 'women,' but the interpretation of the Constitution has not followed this line. This, in fact, is indicated by the special legislation which has been enacted applying to women only.

The New Jersey State Federation of Business and Professional Women's Clubs at their State Convention held in May 1947, adopted a resolution requesting that the delegates to the Constitutional Convention include in the proposed new Constitution the statement that wherever the words 'man' or 'men,' 'person' or 'persons,' 'people' or 'peoples' are used, these also shall include 'women.' Their belief is that by this means existing ambiguities will be eliminated.

Sex is not a matter of choice or right. It is a matter of birth and should be so regarded.

The general claim against full equality has been that as women are biologically different, women are the weaker sex. That claim is untenable.

Women's activities in this last war have disproved the myth that women are unable to compete with men in work requiring physical as well as mental skill. Strength in men varies. All men are unable to perform the same kind or grade of work. This is also true of women.

The minority groups, except women, have been successful in having corrections made as to their rights but women up to this time have not been successful in having all discriminations against them eliminated. So-called protective laws for women are actually discriminatory laws.

Since women possess 70% of the wealth in this country and constitute 60% of the voting strength in the country, it is submitted that equality should be clearly defined.

There is no sex in brains.

Women, in all fairness ask that the New Jersey Constitution, under which they will live as well as men, be worded so that men and women shall have equality in all phases of human living, and therefore ask that the Bill of Rights be amended to amplify the words 'man' or 'men,' 'person' or 'persons,' 'people' or 'peoples' as used anywhere in the Constitution to include 'women.'

The Charter of the United Nations provides the following:

'To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the *equal rights of men and women* and of nations large and small.'

The State of New Jersey should be as progressive as the United Nations."

This is respectfully submitted by the New Jersey Federation of Business and Professional Women's Clubs by the committee for constitutional revision—Myra Blakeslee, Grace Ford, May Carty, Libby Sacher and myself.

I would like to say in addition that I believe there is no State in the Union which has provided this equality. But there is a great possibility the Federal Constitution will be amended to include that, and I think it would be a very fine thing for New Jersey if they were just one step ahead of the Federal Government and included this in their Constitution. We don't ask for any change in the Bill of Rights. We only ask for a definition to be added to state that "man," etc., means "women."

CHAIRMAN: Do any members of the Committee have any questions at this time for Mrs. Carpenter?

If you have additional copies of your statement, Mrs. Carpenter, will you leave them with the Secretary, please? If there are no questions, we will call the next witness. Thank you very much, Mrs. Carpenter.

MRS. CARPENTER: Thank you.

CHAIRMAN: Miss Bertha Lawrence.

COMMITTEE MEMBER: Miss Lawrence isn't here right now.

CHAIRMAN: All right. Has Mr. Kerney returned? Mr. Walter Schaefer? Is Mr. Schaefer in the room?

Mr. Schaefer is here to present some personal views.

MR. WALTER SCHAEFER: I want to speak today on a violation in New Jersey of one of the most important principles of democratic government. It's a principle that all of us learned when we were in school; it was one of the basic principles on which the war of the Revolution was fought. I want to speak on the violation of the principle of taxation without representation. I want to bring to your attention that too many of our large cities, and practically all of our resort towns today, have expensive and poor government through the violation of the principle of taxation without representation.

I propose to give an extra local vote to every person who works in a town, irrespective of where he lives. I propose to give an extra local vote to every person who owns property in a town, irrespective of where he has his principle domicile. I seek in this way, to make our democracy more democratic. I seek in this way to secure the election of town fathers who will be truly representative. I seek to substitute majority rule for present minority rule in these large cities and resort towns. I seek to give the community the benefit of the combined wisdom of all workers and all residents, all property owners in that community—not merely the limited and narrow wisdom, the narrow experience of only those people who are residents in that town or city. I seek to make it more difficult for mob rule of our large cities to come into existence and to be perpetuated. I want to eliminate, partly by this device, the sense of futility that so many people have about our democracy today. These people too often feel that they pay the freight, but can't take the ride.

I do not intend to give a vote to corporations; I do intend to give the employees of that corporation the vote, irrespective of where they live. These employees create the wealth out of which their corporations pay the taxes. All of these employees are vitally interested in the police, fire, sanitary and educational services of that community. It is they, finally, who help pay for these services. Their voices should be and must be heard if our democracy is to be restored to a government by all and for all.

When our present Constitution was adopted, the corporations did

not exist. Therefore nothing had to be done to get the point of view of those banded together in a corporate enterprise as to the effect on them of the election of this person or that person. But above all else, people did not reside at distances from their places of work, and so there was no anticipation in our Constitution of 100 years ago of this problem of taxation without representation. This problem has increased as our means of transportation have increased, and today I contend that this is largely responsible for the poor government of our large cities and our resort towns. The men of 1776 and prior thereto knew that if you had taxation without representation you would inevitably have tyranny. They knew it was impossible to have true democracy unless those who were to levy taxes, who were to decide on how the money was to be spent and where spent, were responsive to those who by brain or brawn created the wealth through which taxes must be paid.

Through the course of years, through changes in transportation, we violate this principle of no taxation without representation. We disfranchise not only men of property, we disfranchise labor. Labor understands with increasing clarity that when there is great waste in government, when there are high taxes, then there are lower profits from which they can expect increased wages and bonuses. Furthermore, the violation of this principle is bad for the town commissioners. They too readily understand that theirs is a mere political control by a minority interest. If they provide the kind of "Roman holiday" that this minority can enjoy and appreciate, theirs, or a rule similar to theirs, can be perpetuated indefinitely.

Thus, too frequently it has been in many of our large towns merely a minority, almost a mob, rule. Furthermore, it is bad for the citizens of a town that this condition should exist. Too often the things they get to keep them happy and solid members of the machine are closely fitted so that they may not have the ability to evaluate them in terms of long range satisfaction. Those people need the benefit and the counter-balance of the votes of those others who work in the community. The others may have the understanding and experience as to final costs and results of these more complex modern problems.

There I refer very briefly to the kind of thing that Newark faces today. I work in Newark, I live in Nutley. We are faced today with the problem as to whether the large and expensive airport that we have, and the Port of Newark facilities—whether those facilities are to be carried as a local problem by Newark or whether they are to be turned over to the Port Authority. Even if that problem were to be put before the voters of the City of Newark by a referendum, how many of those people by reason of their training, by reason of their thinking ability, by reason of their experience, could properly,

in a referendum, vote on such a complex—an extraordinarily complex—problem?

Finally, along that line, the present method of taking a vote on local affairs is generally bad in its effect upon the people. Too often people shrug their shoulders today and say they can do nothing about a bad situation which engulfs them in ruinous taxation.

In reform of vicious government the responsibility of citizens must be increased if our democracy is to endure. People must not be able to say, "I can do nothing about this." They must be permitted and, if possible, compelled to express themselves on all questions that affect them. By increasing their responsibility, you will increase their interest and eliminate this apathy—and I think that every one of us who is very much interested in democratic government must feel that almost the worst thing about our democracy today is this general feeling of apathy, this general feeling that we cannot do anything about this, that or the other thing.

I invite your attention to what went on in Germany 15 or 20 years ago. I'll grant that they had far less experience and background in democratic government than we, but too often they shrugged their shoulders about these things, these steps one after another toward totalitarian government. They said, "Well, what can we do about these things?" And you will always find a tendency toward totalitarian or tyrannical government where you do not make and allow and almost compel people to be responsive to the problem and to take some interest in it.

A second principle that is involved is the principle of checks and balances. Democracy cannot work, it cannot exist where all of those interested in certain results cannot indicate their opinions. After all, the principle of no taxation without representation is merely a specific illustration that all important powers in a democracy must be balanced against each other. The principle of checks and balances is an attempt to reach a balance of power. It is also an attempt to ascertain the voice of all the people, not merely some of the people.

I dread the increasing tendency in our country to ignore this important principle. We create governmental authorities not responsive to the people. We create bureaus of government with separate sources of income and no responsible control by the people. We place government—state, county or municipal—in business and ignore the principle of checks and balances. Down that road lies excessive bureaucracy and, finally, totalitarian government. It makes no difference whether one political party or another political party attempts this violation of the principle of checks and balances. Where these separate bureaus and towns and cities are allowed to go on unresponsive to those people who through their brain and

brown finally have to create the wealth out of which that phase of government goes along, you are simply bound more and more to have mob rule or tyrannical government.

Now, it may be objected to this scheme of mine to give multiple votes to people dependent upon where they own property and where they work, that there will be considerable difficulty in taking that vote. I think one of the very important things about our government today is that we have not hesitated to spend money or to go to great lengths to make our democracy work. Certainly this foolish idea of excessive economy never occurred to the people of 150 years ago when our Federal Constitution was being created. They decided that if the voice of the people must be heard, and if it must be ascertained, that whatever expense was involved in that was a worthwhile expenditure.

Some might contend that this principle of multiple voting would give increasing effect to property rights, but even labor will get this vote, and they are more and more learning the importance of good government for the least money. They are more and more realizing that where there is excessive or ruinous taxation, the corporation or the employer for whom they work does not have enough pocket out of which to pay them higher wages and the bonuses to which they are entitled—and by the way, I might say I am a strong believer in moving toward the principle of a definite share for labor in the profits of all enterprise. After all, along this line of giving increasing rights to property, what is a democracy and what is liberty in a democracy, after all, when property rights, all personal property rights, are not recognized? We see in some of the dictatorship countries the destruction of personal property rights, or at least the destruction of property rights plus the necessary concomitant of a secret police, has destroyed there all interest in government. May I also call attention that even in this country where a certain section of the people have been disfranchised and have had no effective control of their property rights, that there in those local governments you have had a tendency toward dictatorship and towards a limited form of rule.

To sum up everything, therefore, I propose that through means to be prepared by lawyers and through paragraphs which, of course, it would be impossible for me to prepare, we do insert in our Constitution the principle that there must not be taxation without representation, and that that representation through franchise shall be given to people as to each town in which they work as well as in the town where the principal domicile is, and that that extra voting shall also be given to those summer residents or owners in resort towns, even though their principal domicile shall be elsewhere. I characterize and bring all this together under the general principle

that we must recognize in this new Constitution the principle of no taxation without representation.

Now, if there are any people here who have some questions, I will be glad to answer them.

CHAIRMAN: Do any members of the Committee have any questions at this time? . . . I guess there are no questions, sir, so thank you for your views.

Is Mrs. Herbert Davis here at this time? Mrs. Davis is President of the American Association of University Women of New Brunswick, I believe.

MRS. HERBERT DAVIS: I don't know whether this is the customary role of women or not. I have really come to express approval rather than disapproval. As a representative of our group, the American Association of University Women, we want to express our approval of the provision that the New Jersey Committee for Constitutional Revision has made for future changes in the Constitution.

We were members of that committee, and we feel that the Constitution should be—the question of authorizing revision should be—submitted to the people at regular intervals. We feel that the Constitution belongs to the people, and that they should, therefore, be consulted at intervals regarding their opinions on their own Constitution—whether it is still working as they had expected it to work or whether it has been shown to have a number of weaknesses that they disapprove of. We also feel that this provision will work for the greatest good, to the satisfaction of the people; that any group, if dissatisfied this time, will know that in the good American custom we can try something once, and if it is proved that it isn't working as we wanted it to work, in 20 years we can try it out again and make whatever corrections seem to be important at that time. We just want to express our approval of this provision at this time.

CHAIRMAN: Do any members of the Committee have any questions at this time of Mrs. Davis? . . . If not, we'll excuse Mrs. Davis.

I will restate at this time that we would like to try to clear our schedule of people who wish to appear on Article I, Rights and Privileges. We ask others who wish to speak on other subject matters to please wait and inform us of their desires to be heard on something other than what is scheduled at this time.

Is Dr. Hill in the room? . . . Will you please come forward, then? Thank you.

DR. J. O. HILL: Mr. Chairman and friends: I am not going to talk; I am representing the Essex County Colored Republican Council. We are proposing changes in the Bill of Rights, so the arguments for these changes will be presented by our counsel, former Assemblyman J. Mercer Burrell, vice-president of the National Bar Association who will make the argument. J. Mercer Burrell.

CHAIRMAN: Thank you, Dr. Hill. Mr. Burrell.

MR. J. MERCER BURRELL: Mr. Chairman, ladies and gentlemen of the Committee:

We are not at this time presenting a prepared argument. However, you have been furnished with copies of a resolution adopted by the Essex County Colored Republican Council. We are supporting proposed Section 5-A.¹ You are familiar with that. The terms are (*reading*):

"No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by this State or any agency or subdivision of the State."

In the preamble and clauses of our resolution—

CHAIRMAN: May I interrupt the witness to ask whether or not, so I can follow you—we have so many things, I don't know which one to refer to. Do you refer to this resolution of the Urban Colored Population Commission?

MR. BURRELL: No, we do not. The resolution of the Essex County Colored Republican Council to the 1947 Constitutional Convention of the State of New Jersey.

CHAIRMAN: Do you have an extra copy?

MR. BURRELL: Copies were sent here by our chairman, Dr. Hill. May I pause a minute to ask if he has additional copies?

CHAIRMAN: If we let the witness proceed, I will look through the file here which we received this morning and see if we have it. Go ahead.

MR. BURRELL: May we stop just a moment? It may be that additional copies are here, and we will furnish them to you.

I know that the copies were sent to the Clerk of the Convention, 15 in number. However, I succeeded in obtaining two additional copies, and we perhaps may use them. One of those we ask should be returned to the Clerk. If for some reason out of our control these copies have not been distributed to the Committee, we do understand that they definitely were forwarded to the Secretary of this Committee.

CHAIRMAN: Copies are here now. Will you please proceed, sir? Go ahead. You may go ahead now, please.

MR. BURRELL: May I restate our proposal? (*Reading*):

"No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by this State or any agency or subdivision of the State."

There appears to be a very definite necessity for a restatement of

¹See Appendix to these Committee Proceedings.

the principle against discrimination here in New Jersey. When the Constitution of 1844 was enacted there had not been the Civil War amendments to the Federal Constitution, namely, the 13th, 14th and 15th Amendments, and therefore, in our opinion, a great segment of our body politic was not considered in the enactment of the 1844 Constitution. We may say several segments, because it was before the enactment and the amendment concerning suffrage for the women of our State. We therefore feel that very definitely there should be a restatement—a restatement in line with not only national but international principles.

We are greatly concerned in selling democracy to the United Nations, to the inhabitants of Timbuktu, Afghanistan, Albania, Bulgaria and other places, and they are to see that democracy actually lives and that the inhabitants of these far away lands are protected in their civil rights. Should we not be equally and far more concerned in seeing that these basic fundamental laws of our State declare in unequivocal terms that all citizens of the State are of the same status, regardless of accidental questions of race, creed, color, or national origin? It is for that purpose and in line with the sentiment which was evidenced by the use of these words by the President of these United States speaking in Washington before the great national convention of the National Association for the Advancement of Colored People, where the President said very definitely that we could not delay action against discrimination to wait for the most laggard and backward community or section to catch up, but that a definite, vigorous and progressive action was necessary at this time.

The Constitution of New Jersey should forbid discrimination of all kinds, including discrimination in housing, discrimination in educational institutions, discrimination in admission to hospitals, and discrimination in opportunities for employment. All of those broad discriminations are interdicted by this proposed amendment, and this is not, in our opinion, a radical proposal. It does not come to you from a group of wild-haired radicals, but comes to you from substantial citizens of your State. The president of our organization who just preceded me is a present member of the Legislature of this State. And I have served two terms in the Legislature of this State. We are not wild-eyed radicals, but we are persons who have been citizens of the State who have met with the problem and studied it, and feel we offer to you the best solution of something that cannot be avoided, and that we hope that this Constitutional Convention will attack it with courage.

To quote from a statement made in New York at the time of their constitutional convention which adopted a similar amendment, in the language of this amendment let us announce to the millions of

our citizens that there shall be no discrimination in our democracy in this great State. We are citizens of a common country and a common State. We are entitled to equal opportunity regardless of the race from which we spring, the color of our skin, and the faith in God that we profess. It is our sincere hope that you will carefully consider this provision which is supported not only by our group but by many organizations which have carefully considered the problem over a period of time, and we ask that the New Jersey Constitution be modernized in the thought of 1947—after the Civil War, after the adoption of the 13th, 14th and 15th Amendments, after the emancipation of a segment of our population from chattel slavery, and after the emancipation of our women from the slavery of denial of the ballot.

Thank you for this opportunity. We'll be glad to discuss it further, if desired.

CHAIRMAN: Are there any questions at this time that any of the members of the Committee have to ask?

MR. LAWRENCE N. PARK: I believe you state that you are a member of the bar.

MR. BURRELL: I am—for 25 years.

MR. PARK: Yesterday a man advocated the same thing but confessed that he was not a lawyer and was not in a position to offer us any technical information. As I read your proposal—and I've read it—it appears to be identical with the proposal submitted yesterday by the Department of Education representative of the Division against Discrimination. Now, you have advanced to us the theory that the rights and privileges to which you are referring ought to be in general language. Are you familiar with a proposal which was advanced by the Urban Colored Population Commission?

MR. BURRELL: I am, sir.

MR. PARK: Is it your opinion that the proposal violates your own idea—that it is too detailed in terms?

MR. BURRELL: I would not say so. In fact, there is one provision of that proposal I very heartily desire to endorse, although not ensconced in our own proposal. And that follows: "and any writing, agreement or practice in violation hereof shall be void and unenforceable." That strikes against the very way of discrimination, whose practice is increasing, according to the restrictive covenants in real estate law. I do feel that, as a matter of pure language, there could be some possible condensation in the amendment submitted by the Urban Colored Population Commission. But in effect and in principle, we are behind that as much as behind our own.

MR. PARK: But your specific proposal is that which is contained in the mimeographed copy here.

MR. BURRELL: Right, sir.

MR. PARK: Now, since you are a lawyer you are going to be cross-examined.

MR. BURRELL: Proceed, sir.

MR. PARK: We have the difficulty—assuming we are in favor of the principle which you are advocating—we have the difficulties of technical draftsmanship. You will note your first paragraph starts out by saying that no person shall be denied the equal protection of the laws of the State or of any subdivision thereof. Now, is it not true that that is the law of New Jersey because it is incorporated into the 14th Amendment?

MR. BURRELL: I differ with you slightly. There is a question as to whether the 14th Amendment extends to discriminations practiced by individuals against individuals within a state. The denial of protection of the laws by the state itself is, in my opinion, prohibited by the 14th Amendment, but not the practice of discrimination by individuals, corporations or subdivisions of the state.

MR. PARK: Well, I agree with you on that, but I'm talking now about your first sentence. What I wanted to know is your advice on the question, since you agree that brevity is a very desirable thing, and if there is already as part of the organic law of the State the content of the first sentence of your recommendation, where is the need to repeat it? I agree that the 14th Amendment is a limitation on governmental actions, not individuals; but since you have already incorporated in the second sentence the limitations imposed upon the State, as an agency, are you not thereby repeating?

The criticism I make is, first, this: that your first sentence is surplusage, that you are only repeating in that paragraph what already is the law of the land, the law of the State. Secondly, that if you are stating it at first as a general principle and then you are repeating it again in those details, what about the possible argument that the specific controls the general and that the general might lose some of its force and effect?

MR. BURRELL: May I direct your attention to the words "or any subdivision thereof." That is not at present contained in any constitutional provision under the 1844 Constitution.

MR. PARK: I don't want to argue, but I want to get it cleared up in my mind. The point that I make is that you are putting in your next sentence the same thought you put in your first sentence. Now, why won't you get everything that you want by eliminating the first sentence? Starting off with the second sentence, does that not give you everything that you are after and can't take anything away from you?

MR. BURRELL: There is the possibility that we hope to gain strength by a restatement of the principle in specific terms, whereas the first sentence is general. I agree on that.

MR. PARK: Can you give us any good legal reason why the first sentence should be in?

MR. BURRELL: There is a difference of verbiage. One says, "No person shall be denied the equal protection." The other says, shall not "be subjected to any discrimination." Those things may not be definitely synonymous. Denial of the protection of a law, and subjection to discrimination may be different. For that reason I feel that the two statements might well be contained. One is denial of equal protection of the law and the other one subjection to discrimination.

MR. PARK: We already have the first one by the 14th Amendment. And the second one—

MR. BURRELL: I previously made the statement that the 14th Amendment only limits the action of the State and does not extend to the actions of the individual, the corporation, or a subdivision of the State against another individual.

MR. PARK: But it does extend to every activity of the State, all the way down the chain, as long as they are acting under a color of office. Isn't that right?

MR. BURRELL: There may be some discussion there where the State has delegated certain powers—whether the superintendent of a hospital for the insane, for instance, could refuse to admit a person because his name ended in "izky." The question would be whether the superintendent of the institution would violate the 14th Amendment, or whether we would go to the Constitution of New Jersey in that particular instance. Then there are quasi-public institutions, which are frequent malefactors in the matter of discrimination; and it is a question whether they come under the prohibition of the 14th Amendment which extends only to the State. I think that your argument as to surplusage is good on the surface, but if it is desired to give us a strong amendment, no harm will be done by keeping in both sentences.

MR. PARK: Thank you very much.

CHAIRMAN: Any other questions?

MR. JOHN H. PURSEL: You spoke of restrictions in deeds as to colored people buying in certain sections. Am I not correct in the thought that there are United States Supreme Court decisions that make such restrictions illegal?

MR. BURRELL: I only wish that you were correct, sir. I am a member of the committee of the National Bar Association which is presently preparing a brief in an appeal from Circuit Court of Appeals in Michigan, which may be taken to the Supreme Court on that subject. The Supreme Court has not declared a restrictive covenant legally unenforceable.

MR. PURSEL: How about the New Jersey courts?

MR. BURRELL: The New Jersey courts have not definitely acted on the question of restrictive covenants. There is a decision in the State of California which is now being appealed, which outlaws restrictive covenants. The decision recently in the Supreme Court in Michigan is to the contrary, and one in the state court of Illinois is to the contrary. I've cooperated in the brief *amicus curiae* in both Michigan and in Illinois, representing the National Bar Association.

MR. PARK: While you are preparing the brief you might look up that case in New Jersey. There is a ruling in New Jersey and you can find it if you locate that case in the District of Columbia, I think it's *May v* somebody.

MR. BURRELL: Thank you; I appreciate that greatly.

MRS. MARIE H. KATZENBACH: May I ask you a question? Would not the statement that "no person shall because of race . . ." be sufficient?

MR. BURRELL: I do not think so. Persons may be designated by racial designations, which are not always synonymous with designations as to color. A person may be sometimes of one race but his color is decidedly different. I think it is necessary to use both words, as they are definitely not synonymous.

MR. PURSEL: How would it be if you used race and color and then left those other terms out?

MR. BURRELL: Oh, very definitely we want the prohibition against creed and religion. That is equally important. It is one of our great discriminations. We could not at all leave out creed or religion. Creed and religion must be in.

MR. PARK: I don't want to be too oppressive on this thing, but you are one of the few lawyers who has been here. You can appreciate the difficulties the lawyers have on this thing, and I would like you to give, if you wish, your concept of what is included within the idea of a civil right, because obviously this is going to be discussed a great deal. What do you mean by civil right? What does it include and not include?

MR. BURRELL: That is a question that is rather difficult to answer. To go back to the original constitutional concept of right of enjoyment of life, liberty, and the pursuit of happiness, of those things which go to the exercise of the right of liberty, pursuit of happiness, would be the beginning of civil rights. Take first the right of the individual to enjoy public accommodations—contra-distinction to private accommodations. Under civil rights we do not assert the right of any individual to invade the home of any other person, or to invade his club, or his fraternity, or lodge; but in places of public accommodation, which are licensed by the State or by a subdivision thereof, every citizen should have equal

accommodations—not one to pay ten cents for a beverage and the other one to pay a dollar, one to enter and the other not to enter.

The question of civil rights is rather broad. We might extend them in some cases, as some states have, even to the question of discrimination in the ownership of property. Our own State has a civil rights law which governs largely the question of the use of public accommodations. Whether public accommodations should extend to hospitals, to schools, and other things is a matter of discussion. Recent amendments have been introduced, but unfortunately were not adopted. Doctor Hill, who just preceded me, introduced an amendment to include hospitals, schools and others, but the amendment was not successful. If you have a specific question, I'd be very happy to answer it. I don't want to take too much time of the Committee. We might talk on this subject for minutes and it might go into hours.

COMMITTEE MEMBER: Would it be asking too much for you to give us some kind of a brief, setting out the rights of colored people under the New Jersey legislation? Could it be done?

MR. BURRELL: I wouldn't like to limit it to colored people. I'm not appearing strictly for colored people. I'm appearing for citizens of New Jersey. Accidentally, I'm colored; but I'm equally interested in discriminations against women, against persons of one religion, against a person's national origin. I believe that which is good for all of the citizens will eventually be good for any specific minority.

I do not wish to limit my argument to color, but I will tell you that there are numerous statutory enactments which protect persons of minority groups. I happen to be the author of several—the fair labor bill with regard particularly to discrimination in employment. This was a law introduced by me and enacted in 1933. Mr. Randolph is the author of a law with respect to riots in assemblage. The Stackhouse law was against discrimination in employment, particularly during the war years. The Urban Colored Population Commission, which is the investigating body, has some measure of power in the way of protection; and we have of course the latest, the Division against Discrimination under the Department of Education. We discussed that, I believe, yesterday and representatives of that group are here today. May I also say that there are laws prohibiting various discriminations. There are laws prohibiting discrimination in admitting children to schools, and there are decisions under these various laws.

COMMITTEE MEMBER: I think all of that would be very helpful to know about, as far as I'm concerned. I don't know much about it.

MR. BURRELL: I shall be very happy to see if we cannot find

a compilation of that and get it to you today or tomorrow, and to any other members of the Committee who may be interested. But we still feel that in adopting statutes from time to time you are attacking symptoms; that when you are making a constitutional enactment you are attacking basic causes. I believe it would be better to have a constitutional enactment reaching the cause, rather than continually treating symptoms, in effect, as we do for the moment by our legislative enactments.

CHAIRMAN: Are there any other questions? . . . Thank you Mr. Burrell.

At this time I wish to call Mr. James Kerney of Trenton, New Jersey. I believe Mr. Kerney will tell us whom he wishes to appear for.

Our hearing today is on Article I, the Bill of Rights, but we are digressing from time to time. If Mr. Kerney has some other matters he wishes to mention, I'm sure the Committee will be glad to receive them.

MR. JAMES KERNEY, JR.: I represent the New Jersey Committee for Constitutional Revision which is composed of a great many state-wide organizations, including the C.I.O., the A.F.L., the League of Women Voters, the National Council of Jewish Women, and a number of other groups. We have agreed upon a minimum program which all of these organizations feel should be part of our basic law.

There are two aspects of it I'd like to tell you about now. One is concerned with Article I. We feel that there should be an anti-discrimination clause in Article I. We have quite deliberately limited ourselves in the phraseology we suggest to the simplest possible words.

We would like to suggest that paragraph 4 of Article I be amended. It now reads that

"There shall be no establishment of one religious sect, in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right, merely on account of his religious principles."

We would like to see struck out the phrase "merely on account of his religious principles," and in its place the words "because of his race, color, religion, or national origin." We feel that that is a very minimum statement of an anti-discrimination clause that ought to be a part of our fundamental law and which will, of course, require legislation to put into force and effect. Nevertheless, we are under the strong feeling that as a bare minimum that statement could be a part of the revised Constitution.

In the same Article—Article I—we recommend strongly the inclusion of a very simple, short clause: "The right of workers to organize and bargain collectively shall not be impaired." That

appeared in the report of the Commission on Constitutional Revision in 1942, and we feel it has particular merit in a State like New Jersey, which is so highly industrialized and where the workers themselves merit this kind of fundamental consideration. I may seem to be in a somewhat anomalous position here since I happen to be the editor of a newspaper which has had a strike of considerable duration among some of its employees, and it may sound a little odd for me as a part of that management to recommend to you this clause, but I feel it is fundamental that in an industrial community such as New Jersey the rights of the working man should be protected in the basic law of our State. That is why I heartily recommend for the Committee, as well as of my own persuasion, that "The right of workers to organize and bargain collectively shall not be impaired" should be in the Constitution.

That is the testimony I have to give, Mr. Chairman, on the Bill of Rights. I still have some recommendations on the amending clause, too, but I understand you prefer not to have that brought up now.

CHAIRMAN: I think at this time, Mr. Kerney, if you care to, we'll receive your views on it because this is our last stated hearing, and if we can cover all the ground today, we will hear everyone on anything they wish to be heard. Since you are now in the chair, why don't you proceed?

MR. KERNEY: Would it serve any purpose that I answer questions about Article I first?

CHAIRMAN: Does any member of the Committee have any questions concerning Article I—on Mr. Kerney's expressions of his opinion on that subject matter?

MR. PARK: Mr. Kerney, do you desire to express any opinion one way or the other on the problem of whether this right of collective bargaining, which probably has in it the right to strike, should embrace such individuals as state employees or public utility people, people who are vitally connected with the continuous running of an organized society?

MR. KERNEY: I haven't given much thought to that, Mr. Park. I am inclined to oppose the right of any individual to strike against government. In saying that I must make it clear that I'm speaking as an individual. To the best of my knowledge that matter has not been discussed by the Committee for Constitutional Revision. We recommend without any alterations the phraseology which I read, which is virtually word for word the phraseology of the 1942 revision report. Any personal comment that I might make would be entirely personal and not for the committee. I think I had better stop there, since I'm testifying for the committee.

CHAIRMAN: Are there any other questions on Article I? . . .

If not, would you care to proceed now, Mr. Kerney?

MR. KERNEY: Our committee feels that more than any other item in the Constitution and more than any other Article, there is need for a rather sound and fairly complete revision of the amending clause. The Constitution, if nothing else were done, would still be an improvement if the amending clause were changed.

I'd like to call your attention, first of all, that in the 104 years of our present Constitution's life there have been few amendments, and virtually none which went to any basic part of the Constitution. The amending clause adopted in 1844, while it appeared simple on its face, has been effective in preventing any real amendment to the Constitution.

With that in mind our committee recommends in the strongest possible terms that amendments be adopted by a simple majority of the Legislature and, if the Governor approves, go at the next general election to the public for their determination. If the Governor vetoes, we recommend that a three-fifths vote of the Legislature be necessary to pass it over the Governor's veto, and if it is so passed, that it go to the public at the following general election. I believe that the first suggested amendment is one of the most crucial items to be considered by the Convention. I believe that it alone can be of greater influence in the adoption of a revised Constitution than any other single item to come before the Convention.

Furthermore, we feel strongly that every 20 years there should be a referendum at a general election automatically—that every 20 years the public would have the right to determine for itself whether it wants a complete revision of its Constitution. We differentiate considerably between amendments and revisions. The amending process which we suggest is all very well for handling specific amendments concerned with a specific issue, but wholesale revision, a complete revision of the Constitution, is an entirely different matter and cannot readily be done by the amending process. We therefore recommend the automatic referendum every 20 years unless the Legislature by law calls for such a referendum within the 20-year period.

There is considerable sound historic background for this suggestion. The 1844 convention had before it a recommendation of Thomas Jefferson that revision be tried every 20 years, since in every 20 years a new generation would arise which would have the right, the sound democratic right, to vote on its fundamental law. I believe that that Jeffersonian principle, which wasn't adopted in 1844, may well find some further advocates today since the Jeffersonian principles now seem to have encompassed many members of both parties, as against what occurred 104 years ago.

I feel strongly that automatic revision will be a part of the basis

which can provide for a document giving the public access to their Constitution. The difficulty with the present Constitution—one of the difficulties, at least—has been the fact that it was not accessible to the public, that the public had no opportunity to get to the document—no opportunity to consider revising it. And we feel strongly—the constituent organizations which form our committee feel strongly—that a simpler amending clause and an automatic referendum every 20 years are basic. We have prepared a draft which we will submit to you and leave with the Secretary of your Committee which follows these principles. We don't necessarily recommend the exact wording of this draft; we simply offer it to you as a guide which follows the principles I have outlined:¹

“AMENDMENTS

1. Any specific amendment to the Constitution may be proposed in the Senate or General Assembly. Prior to a vote in the House in which such amendment is first introduced, the proposed amendment shall be printed and on the desks of the members at least 20 calendar days, and a public hearing shall be held. If the amendment then is adopted by a majority of the members of each House, in accordance with the procedure for the adoption of bills, the proposed amendment shall be presented to the Governor. If the Governor approves the amendment or if he fails to take any action on same within 15 days, the amendment shall be submitted to the people. If the Governor disapproves the amendment shall not be submitted to the people unless the Legislature shall repass it by a three-fifths vote of all the members of each of the Houses.

2. Such amendment shall be submitted to the people at the general election next succeeding the passage of such amendment not less than 30 days after its enactment and in such manner as the Legislature shall prescribe.

3. If at the election the people shall approve such amendment by a majority of the legally qualified voters of this State voting thereon, such amendment so approved shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment thus approved.

4. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

20-YEAR PERIODIC REFERENDUM ON REVISION

Without limiting the inherent right of the people at all times to revise their Constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the Legislature may submit to the people at any time the question 'Shall there be a convention to propose a revision of or amendment to the Constitution,' and if the Legislature does not submit the question at any time during a period of 20 years, the state officer whose duty it is to certify statewide public questions for submission to the people is hereby directed to certify the question, to be voted on at the first general election held more than 20 years after the last such vote by the people.

The convention, if authorized by a majority of the qualified electors voting on the question, shall be composed of as many delegates from each county as there are members from that county in the House of Assembly, elected, unless otherwise provided by law, at the next general election in accordance with the provision of law applicable to the election of members of the House of Assembly. The Legislature may provide that the election

¹ The draft is included at this point for convenience.

of delegates be held simultaneously with the vote on the question of revision.

Unless otherwise provided by law, any qualified voter of the State shall be eligible to membership in the convention and the convention may provide for vacancies due to death, resignation or other cause.

The delegates shall convene at noon of the second Tuesday following their election in the seat of the government, unless the Governor shall by proclamation designate some other place of meeting. The convention shall determine its own organization and rules of procedure.

Any proposed Constitution or constitutional amendment approved by a majority of all the delegates shall be published and submitted to a vote of the electors of the State at such time and in such manner as may be provided by the convention. All proposals approved by a majority of the qualified electors voting thereon shall become effective 30 days after the election, unless otherwise provided by the convention.

The provisions of this section shall be self-executing, but the Legislature shall appropriate money and may enact legislation to facilitate its operation."

I would like, if I may, to take this opportunity to read into the record, at the request of Wheeler McMillen, the editor of the *Farm Journal*, who unfortunately could not be here today, a statement on the amending clause (*reading*):

"It strikes me that few of the proposed changes in the Constitution of the State of New Jersey will be more important than those changes which refer to its future amendment. A document of this fundamental character should not be too easily amendable; neither should it be quite so difficult of amendment as has been the case with the present Constitution.

There is no reason to suppose that the tempo of change, which has marked the recent decades, will become a smaller factor than theretofore. Provision, therefore, ought to be made for meeting unpredictable situations which sometimes come up fairly quickly. This can be accomplished by the provision suggested, for action by a single Legislature, followed by submission to the people. I see no merit in making submission more difficult by requiring approval from more than one Legislature; neither do I believe any Legislature is likely to be so unresponsive as to justify writing in a plan for initiative change by popular petition, either of constitutional change or of legislation.

I am also heartily in favor of a constitutional requirement for offering the people an opportunity to direct or deny a general revision at such widely spaced intervals as would be roughly a generation apart, say 20 or 30 years.

Whatever specific provisions are finally adopted, I hope they will be in accord with the idea that the Constitution should be neither too easy nor too difficult to change."

I believe, Mr. Chairman, that that covers my testimony. Many of the organizations which form our committee are here represented and will, I know, wish to add to this testimony some of their own thoughts, and I hope they may have that opportunity later on in the day.

CHAIRMAN: Now, are there any questions at this time to ask of Mr. Kerney? . . . Do any members of the Committee have any questions? Do you have any questions, Mr. Park?

MR. PARK: Mr. Kerney, do you believe that the organizations with which you have been associated would raise a strong objection to increasing that time from 20 to 30 years?

MR. KERNEY: I think they might object to an increase, since for quite a few years now, most of these organizations have held the feeling that every 20 years the public should have the opportunity to vote on a referendum. I believe the idea stems from Thomas Jefferson's suggestion. And the tradition of a 20-year interval would follow. I believe many of those organizations might object.

MR. PARK: But I think that you will recognize that those of us from the rural sections would have much difficulty with your program, and that we might not have so much trouble on a 30-year proposition.

MR. KERNEY: That is the practical aspect that I very well appreciate, Mr. Park.

CHAIRMAN: Are there any other questions? . . . There are no other questions, Mr. Kerney. Thank you for your views.

MR. KERNEY: Thank you, gentlemen, for your kindness.

CHAIRMAN: At this time I'd like to know whether Mr. Willis—E. A. Willis—wishes to appear. He was on the schedule with Dr. Hill and Mr. Burrell. Does Mr. Willis wish to be heard? While we are finding out about Mr. Willis—Mrs. Robert W. Cornealson, president of the New Jersey Federation of Women's Clubs. . . .

MRS. ROBERT W. CORNEALSON: Chairman and members of the Committee:

I welcome this opportunity to state the position of the New Jersey State Federation of Women's Clubs on two or three of the proposed revisions in the Constitution. I want to say that I was very much impressed with the statement of Mr. Burrell. I felt that it was fair and tolerant and would be effective in protecting the rights of minority groups.

The stand of the New Jersey Federation of Women's Club has been consistent in opposing discrimination against individuals on the grounds of race, creed, color, or national origin. We have a very fine statement of what we call a program for national peace which, if followed, would definitely safeguard those rights for minority groups. I would also like to say that we are very much in favor of keeping in the Constitution, too, a policy of guaranteeing general rights, stated in general principles, and not including too much that is specific and which would infringe on the duties of the Legislature.

It seems to me that it is a great mistake to make too many specific recommendations. It is perfectly possible to enunciate general principles which will protect minority as well as majority groups without being too specific, inasmuch as times change and problems change, and if our fundamental law or Constitution sticks to general principles then specific cases may be handled as the need arises by the Legislature.

The New Jersey State Federation of Women's Clubs has consis-

tently opposed the program of the women's party which would insert in the Constitution of the United States an amendment guaranteeing so-called equal rights for women, not because we do not recognize that there are cases where women's rights are infringed because of sex, but because we feel that the great body of protective legislation which was absolutely necessary to safeguard the circumstances under which women labor, due to biological reasons, should not be infringed or threatened by a provision of a general statement guaranteeing equal rights to women. I would definitely urge upon this Committee that they see to it that when the final draft of your proposals is written you do not in any way threaten the protective legislation which interested groups have fought so long and so hard to place upon our statute books.

Now, speaking as an individual, I would like to make a statement which I think will be unpopular, but which I think should be made. I cannot go along completely with those who believe that there should be in a Constitution a statement guaranteeing to labor a right to organize. I do not for one minute intend to state that labor should not be guaranteed that right, but it seems to me that that is specific legislation which should be handled by the Legislature through appropriate laws rather than to be included in our Constitution. It seems to me, for instance, that there is no more reason for stating that labor should have a right to organize than that certain rights should be guaranteed to employers. Those are to be understood and protected by appropriate legislation. In other words, it seems to me it goes back to the general statement that our Constitution should be a statement of general principles and not of specific legislation.

I should like also to state at this time our approval of what Mr. Kerney said with regard to revision. I think that the need for inserting in the Constitution an adequate statement guaranteeing frequent amendments—or the opportunity for frequent amendments to the Constitution—should definitely be included.

It seems to me that it will not only keep our Constitution abreast of the times—and we know with what speed times change in these days—but it will also, when the final opportunity comes for the people of our State to vote on this new Constitution, make it much more likely that the Constitution will be acceptable to many groups who now might oppose it if specific provisions in the Constitution are not to their liking. If they feel that although there is something in the document which they do not approve, they will have an opportunity at a later date, after the Constitution has had a chance to prove itself, to change and amend and correct what has seemed to be undesirable, they will be much more likely to approve the document as a whole. I submit that that is a very strong argument in

favor of making the amending clause very flexible indeed.

I want to thank you for this opportunity of stating the position of our organization to this Committee.

CHAIRMAN: Are there any questions? . . . I guess there are no questions, Mrs. Cornealson. Thank you very much for your views.

Miss Bertha Lawrence of the New Jersey Education Association.

MISS BERTHA LAWRENCE: Mr. Chairman, members of the Committee on Rights and Privileges:

I'm Bertha Lawrence, of 1703 Pennington Road, Trenton. I represent the New Jersey Education Association. We would like to have your respectful permission to present to you four proposals which our association would like you to consider thoughtfully, if you will. One of these alone deals with rights and privileges as defined or set up in the Constitution, but the other three are specific proposals which have been referred to your Committee, and if we may have your permission we would like to present all of them at this time.

The first proposition which we would like to present is Proposal No. 11, as submitted by Mr. Glass. The exact wording of that Proposal is that benefits payable by virtue of membership in any state pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired. We would like to see that a general provision covering all employees of the State. We are happy and proud as citizens of New Jersey to state that New Jersey has always recognized its moral obligation with respect to these pension and retirement rights. The purpose of asking that it be included in the Constitution is to make matters entirely clear and to eliminate any matters of uncertainty from the proposition. We believe that it merits your consideration from the point of view of two facts. One is that a lay committee—and by "lay" I mean people who are not state employees—in 1942 thought it wise to make almost the identical provision in the Constitution which it proposed in 1944; the other is that a large industrial State, quite as diversified as ours, quite as industrial, has written it into its fundamental law. That is the State of New York.

Our second proposal is connected with the first. It is Proposal No. 13, as presented by Mr. Peterson, and the exact wording is that rights or privileges granted public employees under tenure, or civil service, shall be deemed contractual, not to be diminished or impaired. The reason for the presentation of that is, simply, that it is so closely tied up with the first proposition. That is, the best pension system in the world is of no effect if a public employee a year, two years, five, six or seven years before his pension comes due, may be dismissed.

Part of the recompense of public employees, it has been properly recognized, is non-financial returns. Security is implied in per-

mission for him to invest a certain sum of money in a compulsory fund—that is, a compulsory contribution toward his own security, the State matching these funds. We believe that if he may lightly be dismissed, or dismissed for political purposes, or dismissed for any sort of reason, and he has been meeting his obligation, that that impairs his pension rights and makes the pension provision of little effect.

The third proposal we feel we should not go into at much length because you have already considered it. It is Proposal No. 8, as proposed by Mr. Glass. The exact wording is that there shall be no discrimination under the law against a citizen because of race, color, or religion, and while it was being defended I wondered why someone hadn't added ethnic groups. So many people refuse to recognize that all groups aren't races. Perhaps it is covered by the term "religion."

We know that you have already considered this carefully. We know that you recognize the services of all groups to our country in the recent crisis—the loyalty and the capacity of the people—and that the fundamental rights guaranteed by our United States Constitution are ones we want to keep. So we of the New Jersey Education Association merely underscore this Proposal, and would like to add our voice to the voices of those who are presenting it and defending it.

The last proposal is Proposal No. 7, as proposed by Mrs. Peterson. This has not been worded exactly; it asks merely that you give consideration to the possibility of including in the revised Constitution the use of the initiative and referendum, and we suggest that the "Model State Constitution" of the National Municipal League does contain such a proposition. We believe, and we know that New Jersey does recognize in Article I, paragraph 2, that all political power is inherent in the people. This merely gives assurance to the people that that power does so reside, and if there should be a desire on the part of a specified number of the people to initiate legislation which they believe is necessary to the common good and which they would like to see initiated, they have the right to such initiation; and that if they believe that a proposal before the Legislature or before any group is important to them, that it may be referred to them for their decision, so that at all times the will of the people may become articulate—may be known in order that it may become important in the action of the State. I do not anticipate that this will be used very much. Experience has shown that although it is written into most of the constitutions west of the Mississippi, and in three of the states east of the Mississippi—in Maryland, Maine, and Massachusetts, to mention the only three I can recall—it is still a power which the people would like to see in their hands. If you

have read the current issue of the *Ladies' Home Journal* I think you have found that the researcher stated a very interesting principle when he said that the decision of the people is very often in the right direction.

We would like respectfully to ask you to consider these four propositions.

CHAIRMAN: Are there any questions from members of the Committee? . . . Mr. Glass?

MR. RONALD D. GLASS: Yes, I have a question. Miss Lawrence, I think everyone subscribes to the point of view that the teaching profession today, from a monetary point of view, is an unattractive profession to potential beginners. Do you feel that the proposal regarding making pension rights contractual rather than statutory would have any effect on the potential beginners?

MISS LAWRENCE: I believe it will because I lived through a period of time when teachers were worried when the statement was made that contributions might not be made to the fund, and when there were times when substitute funds such as bridge bonds and so forth were given. The great insecurity of the teachers at that time was really distressing. I think we have to recognize that status is a very, very important thing in the selection of a calling. It is not income alone. If the good teachers of the State have the opinion that teaching is not held in regard by the citizens of the State, that idea is caught so easily by young people that we will have an exodus from the profession. We believe that is dangerous.

Madison said, you know, that education is absolutely essential to any group that wants to be self-governing, and because we prize that principle of self-government we prize the privilege of having only the best. By the best I mean not only those intellectually trained but those who believe with all their hearts that which they teach. That is as important in patriotism as any fact which can be taught. It is because we want that kind of teacher that we are looking for these protections and these rights for teachers.

CHAIRMAN: Are there any other questions?

MR. PARK: I don't understand how your system works, but I suspect from what you said that it functions by the teachers putting in something and the board of education—

MISS LAWRENCE: That's right.

MR. PARK: Much in line with your buying an insurance policy, you have your own money at stake.

MISS LAWRENCE: That is true. Relatively one-half of the funds invested are those contributed by the teachers. They are matched by the State, and the assurance that what they are buying will have the same protection as they would have if they were buying these through a financially solvent insurance company or

annuity company is very important. I would like to say—not for teachers; let's say for all employees—and we want it understood, as we make these conditions, that the party of the second part, the employees of the State, are to fulfill their obligations too.

CHAIRMAN: Any other questions? . . . I guess there are no further questions. Miss Lawrence, thank you very much for your views.

The Rev. L. Hamilton Garner, Newark, New Jersey. Will you identify yourself for the Committee and tell them whom you are appearing, if not for yourself personally, please?

REV. L. HAMILTON GARNER: Mr. Chairman and members of the Committee:

As the name was read you surmised I am an ordained minister of the Christian religion of the Protestant profession. My background is somewhat a varied one. I lived in the State of New Jersey for about 20 years, 10 of which were as a minister of a Protestant church in the City of Newark. Since then I have served in the field of labor mediation and conciliation, and in general in the field of labor relations work, serving as director of the Newark Labor Relations Board, a mediation and conciliation agency, as a public member of that body and director, and after that as a consultant on matters concerning dealings with labor by management.

I am here today as a citizen of New Jersey and proud to be such. I am here feeling also that this is a tremendously important task which you undertake. I am deeply moved by the importance of this occasion, and all the sessions that are being held, in constructing or reconstructing the fundamental law of this commonwealth.

I speak not for any of those association that I mentioned in identifying myself. I speak for a group of citizens of a number of organizations banded together as a council of organizations sponsoring certain amendments to the Bill of Rights section of the new Constitution. And I would like to state, Mr. Chairman, something of the origin of the efforts of those groups by mentioning the names of individuals who assemble themselves for the purpose of getting together a representative group throughout the State to support these amendments which will be made here to you later: Mr. Herbert H. Tate, Dr. Walter G. Alexander—Herbert H. Tate, by the way, is a member of the Board of Education of the City of Newark, recently appointed; Dr. Walter G. Alexander, known throughout the State for his public work, civic activities, a member of the State Board of Health; Professor Albert Einstein, Princeton University; the Honorable Vincent J. Murphy, Mayor of the City of Newark; the Honorable Joseph B. Perskie, formerly Justice of the Supreme Court; Rabbi Joachim Prinz, prominent rabbi in the City of Newark; Miss Catherine Van Orden of the New Jersey Independent

Citizens League. These people got together with the idea of coordinating the sentiment existing throughout the State to bring about an expression in the Bill of Rights that would make very clear that the Commonwealth of New Jersey would have no question in formulating statutes as to the guarantee of the rights of minority groups in the enjoyment of the privileges of citizenship in this State. Consequently they called together a delegatory body of a number of organizations which met some time ago and formulated the amendments which will be recommended to this Committee. And these organizations will sponsor these amendments.

The representatives of these several organizations met; appointed a committee to formulate, to draft, the wording for these amendments; secured for themselves counsel so that the drafting would be technically correct. I believe, Mr. Chairman, that you have received, through the Secretary of this Committee, the suggested amendments of these groups combined in this council of organizations. You have received, likewise, I believe, a statement explaining the position of these groups in drafting those suggested amendments. No purpose would be served by repeating much that has already been said here, by repeating many of the things with which you are thoroughly familiar. I have no doubt that there are members of this Committee who think exactly as we in this group think about these matters. We come simply to, and more specifically to present these matters to you, and to let those of you who are of the same persuasion as we that there is this considerable body of public opinion which supports what I am sure you will want to advocate in your Committee.

I wholeheartedly endorse what Mr. Burrell said in his statement and in his answers to questions here. I think he did a splendid job. One thing that impressed me particularly was that we are not thinking of any particular group; we are thinking of all groups, because all of you, all the citizens of the State, belong in one way or another to some minority group, whether it be religious or whether it be race or color or what not, or national origin. Therefore he says rightfully—we emphasize the fact that we are not thinking of one group of people. It's very largely on that basis that we would urge you to consider that this is something that's important to go into the fundamental law of the State of New Jersey. It is not special class legislation. It is broad; it covers various segments of the State.

It would seem, Mr. Chairman and members of the Committee, that the argument that might be given for the principles which you will find and which will later be enunciated to you through counsel who will follow me here, is that it would seem evident in the light of conditions today that we ought to be very clear in enunciating the principles of non-discrimination in these various realms covered

by the amendment. We have just come through the world conflict and still are in the throes of the aftermath of that conflict. At the very core of that conflict, so far as this nation is concerned, was this matter of the proper dealing with minority groups. It was on the basis of humane teaching and understanding of all groups—religious, racial or otherwise—that this nation of ours was aroused to the effort that was made in that conflict. It was because those principles were challenged, because we were deeply concerned at the violation of what we consider fundamental human decency towards people, that many of us who were opposed to the institution of war laid aside our principles and felt that here at least was a struggle that we might go along with without compromising our consciences on the other issues, because we considered the issue of the treatment of minority groups beyond even the principles that are involved in our convictions about war.

In view of that situation the whole world picture which appears before us today is of these masses of displaced, disjointed people who were discriminated against by the Axis nations. We are at an auspicious moment when we sit here in an attempt to formulate the principles which are going to guide the affairs of this State in the years to come—in an auspicious moment from the point of view of dealing with those things which we conceive to be at the very heart of civilization itself. And it's for that reason that I, for myself and on behalf of those organizations represented in this council of organizations for amending the Bill of Rights, urge you to give serious consideration to the document that has been placed before you officially, to heed that which will come to you from my associates who will follow here on this program, and other organizations who are affiliated with these groups who will appear before you later, as I understand.

We feel that many of the arguments advanced, that what we support here deals too much with specifics—that these matters might better be left to generalities—can be answered by stating that this Constitution which you are in the midst of revising is 103 years old, and that much has happened in those 103 years, including those things recounted by Mr. Burrell: amendments to our Federal Constitution embodying these principles; the emancipation of a vast segment of our population. A development, and we would expect there would be development, in the thinking of those who believe in democracy has come about over those 103 years. The remarkable thing is that so much of what was done 103 years ago is still valid, completely valid. I might say here that what we are proposing does not change in essence what was stated in the Bill of Rights before. What we propose here only codifies what has come to be the common thinking of people everywhere who believe in democracy,

democracy as defined in any logical or historical connection.

So, Mr. Chairman, I again, on my own behalf and behalf of the organizations, urge your consideration of these suggested amendments which leave no doubt in the mind of any person anywhere that we do not believe in discrimination in the exercise of the common rights of citizenship in the State of New Jersey. I thank you.

CHAIRMAN: Are there any questions? . . . I guess there are no questions, Reverend Garner, so thank you for your views.

REV. GARNER: Thank you very much.

CHAIRMAN: Mr. Jerome C. Eisenberg of Newark, New Jersey.

MR. JEROME C. EISENBERG: Mr. Chairman and members of the Committee:

I have been designated for the task of reviewing the proposed amendments, adopted by the Joint Committee on Constitutional Bill of Rights that Dr. Garner represents. I am one of the many lawyers who participated in putting the language together, and the job of clarifying any confusion has been left to me. I have here 10 or 11 extra copies for the use of the Committee.

New Jersey is a good State in which to talk about the Bill of Rights because New Jersey was the first State in 1789 to vote for the first ten amendments to the Federal Constitution containing what we know to be the Bill of Rights.

We do not seek to subtract anything from the present Article I. There are additions to be suggested. The first addition occurs in paragraph 1 of Article I which presently reads (*reading*):

“There shall be no establishment of one religious sect, in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right, merely on account of his religious principles.”

Like others who have advocated changes in that paragraph, the joint committee has suggested the deletion of the words “merely on account of his religious principles” and the addition in place thereof of the words “because of his race, color, religion, or national origin.” So much has been said heretofore on that that I don’t believe any time need be taken for the purpose of explaining the use of those particular words.

The joint committee has suggested an entirely new section which has been called and identified as 5-A on the theory that it might follow the present paragraph 5 of Article I. And the section 5-A, as proposed in its entirety, reads as follows (I’ll be glad to go over it phrase by phrase in a moment) (*reading*):

“No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation or institution, shall subject any person, because of race, color, religion, or national origin, to discrimination in the enjoyment

of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination because of race, color, religion or national origin, in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property and engaging in any business, trade or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law."

The first sentence is divided in two parts, the first of which is: "No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof." It has been suggested here before that that language is surplusage because the rest of the paragraph, or some idea substantially similar thereto, covers that particular topic. The answer to that objection, and the reason for the inclusion of this precise language, is that the joint committee respectfully submits that that language is necessary because it is not included in any other language. The equal protection of the laws relates to matters that are not necessarily limited to discrimination because of race, color, religion, or national origin, and one example that I can think of offhand should suffice to make that clear.

"Equal protection of the laws" could refer to trials, could refer to group practices, or group judgments. It could also refer, for example, and precisely in an economic way, to pay cuts among public employees. If, for example, the State of New Jersey or any county or municipal corporation decided that it would impose in times of economic stress a percentage pay cut upon the salary of its employees, it could happen as it has happened in the past that the percentages vary among the salary levels. Anybody who is earning less than \$1,000 per year, for example, is freed from any pay cut; anybody who is earning between \$1,000 and \$2,000 per annum is subject to a five per cent pay cut; anybody between \$2,000 and \$2,500 is subject to a ten per cent pay cut; and so on. It frequently happens with respect to those percentages that may be adopted by governmental action that discrimination is practiced because somebody who is earning \$2,000 is subjected to one kind of percentage and somebody who is earning \$2,001 is subjected to another kind of percentage, and the man with the lower salary gets in effect less or more money than the man with the higher salary.

I cite that, not as the kind of thing that this joint committee was thinking of, but as the kind of example which demonstrates that equal protection means more than discrimination because of race, color, religion, or national origin.

The second phrase—"nor shall any person be deprived of life, liberty, or property without due process of law"—is, like the first phrase, copied in substance from the 14th Amendment. The only

reason I feel certain that it is fairly obvious that that kind of statement has not appeared in the present Bill of Rights is because the 1844 Constitution, of course, preceded the adoption of the 14th Amendment.

The words "due process of law" have taken on substantial significance due to cases arising in the Supreme Court of the United States as to what is meant by "due process of law," and New Jersey courts have from time to time used the phrase "due process of law" as if there were some paragraph in Article I which gave the courts the right to refer to it. This does for New Jersey what the 14th Amendment has done for the United States. Like all other constitutional suggestions or amendments, particularly in Article I, these amendments are limitations upon the exercise of the legislative power, however exercised. And it seems that the first sentence of 5-A, as proposed, merely codifies and restates for New Jersey what is the fundamental law of the land.

The second sentence says: "Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution, shall subject any person, because of race, color, religion, or national origin, to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable."

It has been held, as we suggested here before, by the Supreme Court of the United States that the 14th Amendment applies to actions by the State and therefore to actions by agencies or creatures of the State. It is true that that has been held with respect to states and with respect to certain state agencies. I think in *Ex parte Virginia* the Supreme Court of the United States held that the word "state" as used in the 14th Amendment meant also a municipal corporation. But the decisions in the United States Supreme Court do not, except by implication, go so far as to say that a political subdivision or agency of the state may be covered. There are agencies and political subdivisions of the state that are not municipal corporations. I think it was Mr. Burrell who suggested that there were perhaps quasi-municipal corporations, and there might be a question as to those. The local board of education, for example, has been held by the courts of New Jersey to be a quasi-municipal corporation. Query: If such a quasi-municipal corporation should practice discrimination, would that involve an appeal to the Supreme Court of the United States to determine what kind of corporation is equivalent to the word state as used in the 14th Amendment? The restatement here in the language suggested eliminates any question as to that.

With respect to "any writing, agreement, or practice in violation hereof shall be void and unenforceable," there have been suggestions

that it is not necessary to include such language because no constitutional provision is necessarily self-executing—that it always requires some implementation or legislative action to make it operative. However, the phrase I've just read is not without precedent. I think there is a provision in part of the 14th Amendment which declared that all debts arising out of the Civil War, all obligations, claims and demands arising out of the Civil War, shall be illegal and utterly void. And if the principle stated in the second sentence is at all valid there seems to be no reasonable objection to saying that "any writing, agreement, or practice in violation hereof shall be void and unenforcable."

The rest of that paragraph defines certain civil rights without attempting to be all-inclusive. The question was raised here today, as has been raised in the past—what is a civil right? And the answer to that must necessarily be in broad, general and perhaps vague language. This specific language does not invalidate any broad, general definition of a civil right, but says that it shall include certain specific things.

Every one of the phrases used here has its origin in cases in law or in constitutions throughout the United States. Some of them are taken directly from statutes of the State of New Jersey—our Civil Rights Act, our 1945 act with respect to discrimination, of which Assistant Commissioner Bustard is in charge—so that there is nothing in these specific statements which is new, but is recognized either nationally or recognized here in New Jersey.

A saving clause is added: "and such other civil rights as may be recognized by statute or common law," meaning that we are not necessarily limited to the definition of a civil right in existence at the time of the adoption of this Constitution, but is a recognition that there may be other civil rights established or ordained from time to time which were not excluded by the framers of this Constitution.

The next proposal of the Joint Committee on Constitutional Bill of Rights dealt with an amendment of present paragraph 16 of Article I.

MR. PARK: Mr. Chairman, it's 12:30 and I think the witness will agree that it is a good time to break off. I move we recess until 1:30.

CHAIRMAN: Did you anticipate that you would need much more time?

MR. EISENBERG: I would say that in any direct statement I would require fewer than ten minutes, but if there are any questions it might run longer.

MR. PARK: Well, there are going to be questions.

MR. GLASS: In view of the fact that it's raining very hard out-

side, let's continue.

MR. EISENBERG: I don't want to interfere with anybody's lunch.

MR. PARK: I'll withdraw my motion.

CHAIRMAN: Mr. Park, I had in mind mentioning that we would recess not later than 12:45, which gives the witness about eight or ten minutes more, and I might state than you have one item on this memorandum, Article IV, which does not come before this Committee at all.

MR. EISENBERG: That's correct, Mr. Chairman, and I don't propose that we discuss that here today. It just happened to be on the same sheet, to keep it all in one.

CHAIRMAN: All right, sir. Paragraph 16.

MR. EISENBERG: Paragraph 16 of present Article I says (*reading*):

"Private property shall not be taken for public use, without just compensation; but land may be taken for public highways, as heretofore, until the Legislature shall direct compensation to be made."

The proposal is to add one sentence saying (*reading*):

"Property taken for public use shall be enjoyed without discrimination because of race, color, religion, or national origin."

This deals, obviously, with the matter of property taken for public use, which means support by the public, including everybody, for some public benefit, and that if property is seized under the power of eminent domain, for example, for use as a library or a railroad or a hospital, supported by and taken for public use, that library, railroad, or hospital must be open to all people, without racial or religious discrimination. There's nothing much to be said about that; it seems obvious and evident. There are cases, not in New Jersey but in Connecticut and in California, which establish this principle for those states. This is merely a restatement of the result of those cases.

The final provision for consideration before this particular Committee is a new section 19-A, so numbered to suggest that it might be added after paragraph 19 of the present Article I, stating that "The right of workers to organize and bargain collectively shall not be impaired"—a restatement of national and state policy with respect to the rights of workers.

There will be other speakers here who will devote themselves to that particular paragraph with respect to the philosophy underlying it. All I can say is that so far as the language is concerned we felt that it was adequate to express the policy of the joint committee.

That's my direct statement.

CHAIRMAN: That completes the direct statement of Mr. Eisenberg. Do any members of the Committee have any questions at

this time?

MR. PARK: Well, let's get rid of the things that aren't so tough. Look at your paragraph 16. Why not exclude "but land may be taken," and so forth and so on, down to that period. You are all familiar with the history of that provision, but the truth of the matter is that they are now paying for the land taken for highways that has outlived its usefulness. Would you have any objection to eliminating that part?

MR. EISENBERG: You mean the second phrase in the first sentence?

MR. PARK: Yes.

MR. EISENBERG: None whatever.

MR. PARK: All right.

MR. FRANCIS A. STANGER JR.: I would like to ask the witness—and I am not trying to be facetious, because he has given a lot of study here to the use of words—are we colored?

MR. EISENBERG: Not in the general sense of the term, sir. No.

MR. STANGER: Well, let's see. In the first clause—I am looking at paragraph 5-A—"No person shall be denied." Second sentence—"Neither shall the State . . . subject any person because" of certain things. Now, isn't there an inconsistency there between your first sentence and your second sentence? In the first place you say "no person," and then you go on in the other to say because of certain things. Isn't that an inconsistency, Mr. Eisenberg?

MR. EISENBERG: I don't think so, sir. I'll tell you why. As a matter of draftsmanship, if you should take out for the sake of uniformity in draftsmanship, which I take it your question is directed at—

MR. STANGER: Yes.

MR. EISENBERG: If you should take out the phrase "because of race, color, religion, or national origin," and try to insert it after some phrase beginning "no persons shall because of race, color, religion or national origin be discriminated against in the enjoyment of any civil rights by the State or any political subdivision" and so on, it is more awkward. That was one of the versions we had and we struggled with it to make it sound better and to improve its style, and we ended up with this. I don't think it is inconsistent. It possibly may be so, but as a matter of style the second sentence begins on quite a different note than the first sentence.

MR. STANGER: I am not speaking of its beginning, I am speaking of its application. The first sentence applies to "no person"—why shouldn't the second sentence apply to "no person?" (*Reading*):

"Neither shall the State nor any political subdivision or agency thereof, or any person, group, association, corporation, or institution subject *any person* to discrimination in the enjoyment . . ."

In other words, isn't this class—I don't want to use the word legislation here—but isn't this discrimination the very thing we are trying to get away from?

MR. EISENBERG: I don't think so, sir, for this reason—there may be very important reasons to discriminate against persons in the enjoyment of civil rights because of other things than race, color, religion, or national origin. For example, it might seem wise to the Legislature of New Jersey that a man who has been convicted of one kind of crime or another be deprived of a civil right of one kind or another. Now, if you did not have the limiting phrase "because of race, color, religion, or national origin," the Legislature could not make a law saying that a man who has been convicted of bribery or of some other crime against the public in holding an office, could not vote, he could not hold public office, etc., which might be civil rights—

MR. STANGER: Yes, but you say we lack color, as you use the term. Then why will it not have to say that they can't do these things because of color or lack of color? Now, how are you including all of the people in your phraseology here?

MR. EISENBERG: Well, if you say "because of color," I suppose that could mean any color or lack of color.

MR. STANGER: Then we are colored, aren't we? We're colored white, aren't we?

MR. EISENBERG: If you choose to say so, to come within a constitutional provision of this kind, I would say yes.

MR. STANGER: Yes. So that you would say that we are colored and come within this term, and, if that is true, it isn't necessary at all, is it, because you're trying to have this include a different class because of a different shade of color? Is that not correct, sir?

MR. EISENBERG: Well, we are members of the white race—

MR. STANGER: Yes. Well, why don't we say race—period. Why do we want to discriminate against the folks who happen to be of a little different shade than we are? Why don't we say race and let it go at that?

MR. EISENBERG: I would be perfectly willing to agree with that, sir, on my own if I were certain that courts and Legislature would understand the word "race" as you do this morning, but there are decisions which do not carry out that idea. For example, the United States Supreme Court has invalidated zoning laws with respect to race. I don't know what would happen if a zoning law with respect to color might enter into it, color or lack of it.

MR. STANGER: Yes. Well, the same thing goes for "creed." Don't you use the word "creed?" Are you going to deprive folks with lack of creed from the protection of this constitutional provision?

MR. EISENBERG: No, sir. I think that's fairly implied. The

reason that the word "religion" was used rather than "creed" is that in the drafting of it "creed" sometimes takes on political connotations which we thought, or the joint committee thought, should not be presented in this Article.

MR. STANGER: Well, excuse me, you use the word religion. Suppose the person is a non-religionist; have you included him in your provision here?

MR. EISENBERG: I would say if, for example, an atheist were subjected to discrimination merely because he was an atheist, that it wouldn't be very difficult to agree that he was covered in the language against discrimination.

MR. STANGER: Against religion?

MR. EISENBERG: Yes.

MR. STANGER: But actually it wouldn't be true and if we had a very technical court it might rule otherwise. Correct?

MR. EISENBERG: That's true.

MR. STANGER: So that if we said—not setting up any classes whatsoever—if we said "no person," don't we cover the subject matter?

MR. EISENBERG: The difficulty with that, sir, is this: If you will remember the income tax amendment to the United States Constitution, it says, as I recall it in the exact language, that Congress shall have power to tax incomes from whatever source derived. Now that is as broad and as simple and complete English as can possibly be used—tax income from whatever source derived. What happened? A federal judge said that his salary should not be taxed; he was not subject to income tax because his salary came as a creature who was supposed to do something for the government. Therefore, salary wasn't income in the United States Supreme Court and the word income in that amendment meant, until 1940, that Congress shall have power to tax income from whatever source derived, excluding the salary of a federal judge. Then it came on to the salary of a state judge; then it came on to the salary of workers for the federal and state and municipal governments who were not judges; then it excluded interest on government, county, state and municipal bonds. So that if you take the example of the income tax amendment, that Congress shall have power to tax incomes from whatever source derived, there isn't any possibility of excluding the kind of thing that I mentioned and which created some very serious feeling until the Public Salary Act of 1940. In effect that act said that Congress shall have power to tax income from whatever source derived, and we mean you members of the Supreme Court. Income from whatever source, whether it's a judge, whether it's a state, whether it's a county or municipality.

You see, sir, in drafting language for a Constitution, what you leave out is frequently just as significant as what you put in. If you

try to be so broad by saying "no person" on discrimination—as I gave as one example, a man convicted of a crime—he could not therefore be deprived of a civil right. The State of New Jersey in its courts has decided that the word "all" doesn't mean all. It has decided that the word "immediately" can cover an act which took 20 years to perform. All of these things enter into a repetition of a phrase that has taken on particular connotations, and if you try to simplify it here—and I have no objection to trying to simplify it, sir—if you try to simplify it here by saying "race, color, religion, or national origin," you might not include the opposite or the antonyms. Perhaps we had better say "no person." You are going to enter into a field that you don't know the bottom of because of these decisions, the like of which I mention.

MR. STANGER: Mr. Eisenberg, I agree with you in part, but my present thought is that we are making a very great mistake in including the word "color." I think that we are ferreting out one group of people because they are of a different shade. I think that it should say in there, "no race." I agree with you that far—that we should say "no race"; we need that for our protection. Suppose we should become a minority people some day? We need "race" to protect us, sir, if perhaps we should need it. I don't say we should need it. But don't you think we are doing an unfair thing when we put in the word "color"—unfair to the very people we are trying to be fair to?

MR. EISENBERG: If I thought, sir, that the use of these words did not fairly imply the antonyms or the lack of those characteristics, I would say that you may feel free to add on to that phrase, "race, color, religion, or national origin, *or the lack of it,*" or some phrase indicating that. I have no objection to that in principle, but I find it awfully hard to get language to say it, to limit it by eliminating color. To use your illustration leads to the possibility that a Negro, for example, in one kind of decision might be held to be a member of a race and in another be held to be merely a person of color. If I were certain that every judge would adopt the language you use or the interpretation you use, I would agree to it at once.

MR. STANGER: I wouldn't want to be misunderstood. It isn't because I don't want to give equal protection—I do want to give it—but I don't want to take any class or any group and hold it up especially before the eyes of the people and say that we have done something in the Constitution that is merely group or class legislation. I think that's a mistake, and therefore I think that we should be just as broad as we can be.

MR. EISENBERG: It might be appropriate to remark that . . . Take a Moslem or a Hindu. A Mohammedan might describe himself fairly as a member of the Caucasian race and yet he might be barred because of his color. How would you handle that if you left

out color?

MR. STANGER: The race, because of his race. He certainly has a race.

MR. EISENBERG: They might not bar him because of race. In Washington, for example, if you happen to be a Puerto Rican you wouldn't be barred if you were fairly light, but if you were dark you might be barred.

MR. STANGER: Yes, but he has a race.

MR. EISENBERG: He might not be barred because of that. It might be discrimination because of these things, sir.

MR. STANGER: Yes, but he shall not be discriminated against because of his race.

MR. EISENBERG: They might not discriminate against him because of his race but merely because of his color.

MR. STANGER: We are dealing with New Jersey, not a place of prejudice.

MR. EISENBERG: Well, the United Nations is in New York City and their members might come over here.

MR. STANGER: Yes. Well, if we had "race," wouldn't they be protected?

MR. EISENBERG: I don't know. I wish I could answer "yes," but we don't know and that's why the word "color" is in there.

MR. STANGER: I would like, of course, to have the answer because, as I say, I don't think that we should discriminate against a group even to the extent of holding them up to the public as a public object, when we are trying not to discriminate against anybody. I wish you would give it a little further thought and if you reach an answer, address it to me privately, will you? I don't want to take so much time. Thank you, sir.

CHAIRMAN: Are there any other questions from the members of the Committee? . . . You have questions, Mr. Park?

MR. PARK: Yes, but I'm hungry.

CHAIRMAN: All right. We will resume with the same witness at 1:30 P.M. We will have some additional questions, Mr. Eisenberg if you will be so kind as to be available here at 1:30.

(Discussion)

It has been suggested that the chair exercise what I hope is the prerogative of the chair to extend the 1:30 convening time to about 1:40 or 1:45. I'll ask the witnesses who are still waiting to be heard to please be indulgent. We plan to hear every person who is registered and every other person who still wishes to register to be heard. I hope I am expressing the sentiments of the Committee when I say we will sit until we hear everybody.

(Recess for luncheon at 12:45 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 9, 1947

(Afternoon session)

(The session began at 1:45 P. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Stanger, Schenk and Taylor.

Chairman John F. Schenk presided.

CHAIRMAN JOHN F. SCHENK: It was requested that Mr. Eisenberg return after lunch and be available for further discussion. Do any of the committee members at this time have any further questions?

MR. FRANCIS A. STANGER, JR.: Just one more, if you please, Mr. Chairman. Mr. Eisenberg, did you reach any personal decision as to whether the word "color" should be included or omitted?

MR. JEROME C. EISENBERG: I think I arrived at the decision that the word "color" should be included. It was pointed out to me during lunch that black may be the absence of color, and to come to the question, as we said before, the easiest evasion of discrimination is to say you do not object to a man's color but only to his race, etc. There is plenty of room for saying, therefore, that if you want to be perfectly safe, if you agree with the principle, there can't be any real difference of opinion in having "color" as well as "race."

MR. STANGER: You think it's unnecessary to clarify the provision in the Constitution?

MR. EISENBERG: I wouldn't go so far as to say it was unnecessary.

MR. STANGER: You think it is necessary?

MR. EISENBERG: Yes.

MR. STANGER: Do you think it's necessary to insert a reference about persons having no religious belief?

MR. EISENBERG: I think that when you use religion or religious principles in the Constitution, they are substantially synonymous, and I think they would include the absence of religious beliefs to cover atheism.

MR. STANGER: Thank you very much, sir.

CHAIRMAN: Are there any other questions at this time? . . . Mr. Park.

MR. LAWRENCE N. PARK: Mr. Eisenberg, I believe that you told us that the substance of the due process language that is now incorporated in this draft is drawn basically from the 14th Amendment. I think that you told us correctly—I know that you did tell us correctly—that that is the supreme law of the land and binds New Jersey as well as any other place under the jurisdiction of the Constitution. But before we go into consideration of it, I would like to ask your opinion on this point:

Since the due process of law clause is already binding upon us and since Article I, paragraph 1, has been construed by our courts, to my knowledge, as being if not identical, at least substantially equivalent to the due process of law clause, what about this problem? Suppose that we have in New Jersey certain types of legislation which are called social legislation, which many of us approve and many do not, and it is alleged that this legislation is a violation of such due process. I suppose the persons that are against such a statute would raise the point that it's violative of the due process clause, the 14th Amendment, and were your proposal to be adopted, it would also be violative of what you might call the second subdivision of the new section 5-A. So that you would therefore have two distinct, asserted grounds for invalidity.

Now, suppose the decision of our Court of Errors and Appeals, would be on the ground that the statute was as a matter of fact violative of such due process, and let us suppose the court were either explicit or vague on the question and ruled that the law violated both our Constitution and the Constitution of the United States. Is it not true we would then be estopped from having any further review by the United States Supreme Court on the point because the matter would have been disposed of by a ruling which would be adequate on non-federal grounds? I am quite confident—maybe I'm wrong—I am quiet confident that if that ruling were made, no one would have a right to go to the United States Supreme Court. Probably one couldn't get there even by *certiorari*, because the Supreme Court would say the matter involved concerned our view on the subject of due process, rather than the 14th Amendment; the court would hold that the State of New Jersey says that it violates its own Constitution.

Now, don't you feel that we are running an unnecessary risk, since we have nothing to gain by putting it in? Does it not close the avenues of finding an adjudication, especially when the statute is declared unconstitutional? We could have a situation such that in New Jersey one particular type of statute would be illegal and yet the Supreme Court of the United States might say, as far as it is con-

cerned, that 47 other states can have it. Then we have much to lose and little to gain by putting that clause in.

MR. EISENBERG: It's a very good question, sir. I would say on the narrow set of facts that you postulate, if there were to be an attack on legislation on those grounds, and if it reached the highest court of this State, which declared that due process was satisfied, or that it wasn't in a particular case, that probably the Supreme Court of the United States would refuse to review it. To that extent, my answer agrees with yours. Of course, the losing party would much prefer to get to the Supreme Court of the United States, whereas the party holding the favorable judgment or decree would be very content to rest on the decision in New Jersey. I can't say, as a matter of policy, whether that's good or bad. As a lawyer, I would say it depends on whether I am on the winning side or the losing side of a case. But I don't see that your argument, valid as it is, necessarily eliminates appeals to the Supreme Court of the United States on the question of due process. If the losing party establishes a claim of violation of constitutional right under the Federal Constitution, then the New Jersey courts, of course, could not have the last word. It would only be an interpretation under the Constitution of the State of New Jersey and I don't think you would be running much of a risk there.

MR. PARK: Well, we have both expressed our opinion. I thank you very much for it. I'm going to dig into it a little bit further.

MR. EISENBERG: I think there is no doubt that New Jersey could not dispose of a claim of constitutional right where there is an alleged violation of the United States Constitution, merely because the New Jersey Constitution contains this due process clause. I agree, certainly, that the New Jersey court would have the last word on a claim of violation of the New Jersey Constitution—and that might be the last word today, whether we had a due process clause or not, in view of the fact that the Supreme Court is, under *Erie Railroad v Tompkins*, taking the view that the state law is the last word on state questions.

MR. PARK: Well, if you change your mind on it or find anything else, will you give us the advantage of your research?

MR. EISENBERG: I will be very happy to.

MR. PARK: I think it is a problem which is quite important, especially to lawyers, although it might not appeal particularly to persons who are not trained along these lines.

MR. EISENBERG: I will be very glad to do some further work on it, sir.

CHAIRMAN: Are there any other questions at this time for Mr. Eisenberg from members of the Committee?

(Silence)

CHAIRMAN: I guess that completes it then, Mr. Eisenberg. Thank you very much.

MR. EISENBERG: Thank you, Mr. Chairman and members of the Committee. I have here a memorandum of which I will be glad to leave two or three or possibly four copies, if you would like to see them.

CHAIRMAN: Yes, we would like to have them. If you will leave them with the Secretary, I will see that the Committee has them for review.

Mr. Carl Holderman, representing the Congress of Industrial Organizations.

MR. CARL HOLDERMAN: Mr. Chairman and members of the Committee:

I am here today representing the New Jersey State Industrial Union Council, which is the state-wide governing body of all C.I.O. unions in this State. We represent and speak for the largest group of organized labor in the State, comprising 397 local unions and 226,934 individual members as of December 1946. About 30 unions, with more than 30,000 members, have been added since then. I am speaking here officially today on behalf of the State C.I.O. and on behalf of the New Jersey Committee for Constitutional Bill of Rights, and endorsing the proposals that have been submitted to you previously by the representatives of that committee.

There are several other groups which are not connected with either of these organizations, however, who have endorsed some of the proposals that are before you for consideration. For the record, let me enumerate the various organizations represented by one of those groups, the New Jersey Committee for Constitutional Revision, which has approved the number one proposal which has been presented to you by the New Jersey Committee for Constitutional Bill of Rights: the first clause and the general clause against discrimination and the clause recognizing the right of labor to organize and bargain collectively. The New Jersey Committee for Constitutional Revision, which has endorsed these proposals, includes the following groups: the State C.I.O., the State A. F. of L., New Jersey Association of Real Estate Boards, National Council of Jewish Women, New Jersey Taxpayers Association, Consumers League of New Jersey, American Association of University Women, New Jersey State Federation of Colored Women's Clubs, New Jersey League of Women Voters, and the New Jersey League of Women Shoppers. Miss Marion Courtney of the New Jersey Committee for Constitutional Revision has estimated that these various organizations have a total membership of between one and one and a half million members.

The Joint Committee for Constitutional Bill of Rights, which has

endorsed *in toto* the proposals that are before you, has the support of the following organizations: The American Jewish Committee, The American Jewish Congress, the B'nai B'rith, Camden County Ministerial Association, State C.I.O., State A. F. of L., Jewish War Veterans, the League of Women Shoppers, National Association for the Advancement of Colored People, the New Jersey Independent Citizens League, Industrial Union of Marine and Shipbuilding Workers, National Council of Jewish Women, New Jersey Urban League, Farmers Union, State Urban Colored Population Commission, and the Newark Teachers Association. The following are among the directors of the Joint Committee: Professor Albert Einstein, Mayor Vincent J. Murphy, Dr. Walter J. Alexander, Dr. Van Arden, Herbert H. Tate, former Supreme Court Justice Joseph B. Perskie, all of whom I need not elaborate on. In addition, the New Jersey Council of Churches, I understand, has endorsed the labor provisions which have been presented to you, and with one or two exceptions the provisions dealing with discrimination generally.

The attention of such a distinguished list of individuals and organizations to the work of this Committee is, I think, a refutation of the opinion held by some that your Committee was one of the minor committees of the Constitutional Convention. Any group such as yours, which deals with fundamental human rights and liberties, cannot be termed minor. In our view, this Committee on Rights, Privileges, Amendments and Miscellaneous Provisions is the most important single committee of this Convention. In your hands will lie not only the framing of provisions for adequate future changes in our basic law and for guarantees of individual and group liberty, but also, and of major importance, is the fact that your Committee, by its actions, will determine whether the new Constitution will have overwhelming popular support or whether the various groups represented here will oppose it at the polls in November.

Before I deal with the specific proposals regarding the Bill of Rights, let me state for the record the stand that the C.I.O. has in the past taken on constitutional revision. As far back as 1939, the need for an extensive campaign for a constitutional convention was foreseen by our organization. At that time, speaking before the third annual convention of Labor's Non-Partisan League, of which I had the honor to be state chairman, I declared: "The whole Constitution of the State is of so antiquated a character and is so out of tune with present day needs, that only a constitutional convention can make the necessary revision." At that time, the executive committee was empowered to carry on a campaign for a constitutional convention. Every year thereafter, agitation for constitutional revision was in our program. In 1942 we criticized the Hendrickson Commission

Report principally for its failure to ease the process of amending the Constitution sufficiently. At that time we stated that we could not support the Commission's substitute Constitution so long as it did not contain a provision for easing the amending process. The changing needs of men and women must not be impaired by a rigid document. This is our basic criticism of the present Constitution and it must not be incorporated into any future one. It was principally for this reason that we opposed the document at the 1944 referendum, although our pleas for anti-discrimination and labor clauses in the Bill of Rights were also not heeded.

The first proposal we would like to make for your consideration is for inclusion in the Bill of Rights of a simple provision that labor's right to organize and bargain collectively shall not be impaired. Let me outline for you the historical precedent for such a proposal. As you know, the right to organize is a natural and inherent right, just as are our other rights which do not violate existing laws. Of course, such things as organizing in groups, acting in concert with other individuals advocating unionism, and publishing pamphlets in support of unionism, are protected by the federal Bill of Rights, which includes guarantees of free speech, press and assembly. However, we find that in the 20th Century, and especially after the first World War, various states and federal judges took it upon themselves to circumvent and undermine these natural and inherent rights of a free people. The right of employees to organize and bargain collectively, through representatives of their own choosing, was interfered with and obstructed by the courts in decisions which were scandalous. As a result of these decisions, the need for federal legislation became apparent.

The Norris-LaGuardia Anti-Injunction Act, passed in 1932, which declared the worker's right to self-organization and collective bargaining to be the public policy of the United States, was the first of a series of federal statutes to implement by law these rights of labor. The National Industrial Recovery Act of 1933, which was later declared unconstitutional for another reason, was followed by the National Relations Act, commonly known as the Wagner Act. The Wagner Act, dealing with labor relations in interstate commerce, did not espouse any new rights. It merely recognized the existing right of labor to organize and bargain collectively, and set up the machinery for enforcing that right. However, as you realize, the National Labor Relations Act, with its subsequent amendments, applies only to labor and management which are engaged in interstate commerce. It does not apply to the hundreds of thousands of workers in the State of New Jersey who are not engaged in interstate commerce, but whose goods and services are made, provided and used wholly within the State of New Jersey. It is significant to

note, therefore, that the two state constitutions which have been revised within the past nine years, have both made provisions for recognizing labor's right to organize and bargain collectively. In 1938, for instance, New York State revised its constitution, including therein three separate sections dealing with labor. One of these, and the most important, declares that employees shall have the right to organize and bargain collectively through representatives of their own choosing. The State of Missouri, in revising its constitution through a constitutional convention in 1945, adopted a similar provision guaranteeing employees the right to organize and bargain collectively. Recent state constitutional revisions have included provisions setting down in their basic law labor's right to organize and bargain collectively.

I would like to note here, moreover, that in both the states referred to above the labor provision was included in the Bill of Rights. In addition, the "Model State Constitution" adopted by the Committee on State Government of the National Municipal League, as revised in 1941, its most recent revision, includes likewise a provision on the right to organize. Their section 103 reads as follows (*reading*):

"The Right to Organize. Citizens shall have the right to organize, except in military and semi-military organizations not under the supervision of the State, and except for the purposes of resisting the duly constituted authority of this State, or of the United States. Employees shall have the right to bargain collectively through representatives of their own choosing."

That's the provision contained in the "Model State Constitution" of the National Municipal League. In concluding my argument for inclusion in the new Constitution's Bill of Rights of a provision guaranteeing labor's right to organize and bargain collectively, let me reiterate that this is no selfish, special interest request. As you have seen from the list of organizations I have previously mentioned, such a provision is broadly backed by many organizations throughout the State which have a large representative membership.

The second proposal that I would request this Committee to include in the Bill of Rights is one providing constitutional guarantees from discrimination because of race, color, creed or national origin. Its provisions have been placed before you by the Joint Committee for Constitutional Bill of Rights. It has been argued that the Bill of Rights should remain untouched as some special, hallowed provision of the Constitution written in 1844. It must be evident to the members of this Committee from the testimony they have heard that the writers of the 1844 Constitution, including its Bill of Rights, had no monopoly on wisdom and their works were not immune to change or addition. Conditions have changed and new situations have arisen since then which make it imperative that broader con-

stitutional guarantees against discrimination be written into our basic law.

For instance, the 1844 document makes no mention of Negroes and their rights. It is obvious that any constitution, at that time, when slavery was still the law of the land, could make no provision for guaranteeing the rights of such a large minority of our people. Furthermore, America at that time was largely a nation of the foreign-born, people who had not forgotten that they and their ancestors came to this country and into this State from abroad. There was no need, therefore, for protection of the civil rights of the foreign-born. It is obvious from a reading of the Bill of Rights that the only form of discrimination feared at that time was discrimination based upon religion. It is also obvious that the authors of the 1844 document could not foresee the forms that discrimination would take in later years. They could not foresee the bigotry that would deny a man a job because of the color of his skin, or the intonation of his voice. How could they know that one day a state law would be needed to guarantee a man employment without regard to his race, color, creed or national origin? How could they foresee that the Federal Government, fighting a global war to insure democracy, would have to adopt a Fair Employment Practices Act as a means of eliminating bias and prejudice in employment practices at home? How could they foresee in those days, when sectarian educational institutions were dominant, that not only our public schools, but our institutions of higher learning in this State, would subject their students to discrimination? A Jim Crow public school system in our cities was no problem in those days, nor were there religious or racial quotas for the admission of students in our institutions of higher learning. How could they foresee that our public accommodations, our theatres, swimming pools, our schools, yes, and even our hospitals, would be barred to certain people because of the pigment of their skin, the accent in their voice, or the churches and religious institutions in which they worship? Yes, how could they foresee the restrictive covenants and other practices that denied large segments of our people the right to enjoy and use property? I've only mentioned to you a few of the forms of discrimination which are practiced every day throughout the State of New Jersey, but I hope they indicate the need for constitutional prohibition against such forms of barbarism and color.

It might be argued that these are matters which have been and could be taken care of simply by legislation rather than constitutional edict. This argument merely dodges the question and is unworthy of serious consideration by right-minded people. You members of the Committee and your colleagues are here to write a basic law for the State of New Jersey. What is more basic, more funda-

mental, than guarantees of human liberty extended to bar discrimination in any form against any of our people? Persons who will argue that discrimination should be made illegal by a legislative law are arguing in effect that at some future date, perhaps in a few years, the Legislature may wish to abolish the law and place discrimination back in the category of a legal principle. The Golden Rule cannot be changed by the Legislature, nor should it be. Similarly, basic civil rights which should be free to all to enjoy, without discrimination because of race, creed, color, or national origin, should be written into our basic law. They may be enhanced or effectuated by legislative enactment, but they should not be subject to elimination or abridgement according to the whim of any future Legislature.

I would like to emphasize here that New York State, which had a legislative enactment outlining penalties for discrimination in its various forms, likewise has the basic principle against discrimination included in its Constitution as a result of the 1938 revision. Here again, let me emphasize, these provisions against discrimination, as well as those guaranteeing labor's rights, have the broad support of several millions of individuals represented by the scores of organizations we have mentioned, to formally carry out the suggestions I have made here today regarding provisions protecting the rights of labor and minority groups. We wholeheartedly endorse the suggested additions to the Bill of Rights drawn up by the Joint Committee for Constitutional Bill of Rights.

I wonder, Mr. Chairman, if I might just touch on one or two minor points?

CHAIRMAN: Yes, of course. Go ahead, Mr. Holderman.

MR. HOLDERMAN: There are one or two minor points that I would like to place on the record before leaving the stand. The first of these is that the New Jersey State C.I.O. Council opposes any suggested equal rights for women amendment which would have the effect of outlawing statutes now on the statute books giving women special protection in industry. On the question of the right of suffrage, we also would like to suggest that the words "male" and "pauper" be eliminated with reference to qualifications for voting. I would also like to voice complete support of the position taken by Mr. James Kerney today on the liberalization of the amendment process, which your Committee has under consideration. In 1944, when the C.I.O. in this State considered the possibility of supporting or not supporting the proposal which was made to the people at that time, the two outstanding provisions upon which they based their conclusions not to support the proposal were the failure properly to amend the Bill of Rights and the failure properly to liberalize the amendment process, including the provision to have a

constitutional convention every 20 years, so that the people in this State would have more to say about their basic law.

I have concluded. Thank you, Mr. Chairman, for the courtesy of appearing here today. I am prepared to answer any questions.

CHAIRMAN: Mr. Carey has a question. Will you pass him the microphone?

MR. ROBERT CAREY: Do you know of any rights—I am speaking particularly of labor now—of any rights that could be given to labor under your suggested provisions to be placed in the new Constitution, that labor doesn't already possess and doesn't enjoy in the State of New Jersey?

MR. HOLDERMAN: That they do not now possess any right that I am suggesting, that they do not now have and enjoy? Perhaps not. The right to organize and bargain collectively is today pretty generally recognized throughout the country. It has been found necessary, however, to implement that by a federal statute guaranteeing the right.

MR. CAREY: But no amendment to the Constitution?

MR. HOLDERMAN: Just a moment. That has had a certain influence upon intrastate industry as well. However, there has been in hundreds of cases throughout this State a denial of that right by individual employers who are engaged in intrastate industry. We believe it ought to be incorporated because, first of all, the Constitution is developed as a basic law to protect the weak against the strong. We can't claim that labor is a minority group. We claim that it is a majority group. But I think that in the State of New Jersey you will recognize that it has also been a weak group as compared to capital and it needs the protection under our basic law against the discrimination that has been practiced for many years. Now, some one might say, "Well, you have that right in the Federal Constitution, or it is a recognized right today, so why should we need it?" Yet, we have found that history has shown since 1789, with the adoption of the Federal Constitution, that it took more than 150 years, or almost 150 years, before there was any formal recognition of that by the Federal Government. Today we believe it ought to be incorporated in this Constitution so that there will be no possibility of an infringement on that right by any future session of the Legislature or any other powerful group in this State.

MR. CAREY: But you know, don't you, that there is no provision in the Federal Constitution—

MR. HOLDERMAN: Of course, I know.

MR. CAREY: —that grants any such right?

MR. HOLDERMAN: Of course, I know that.

MR. CAREY: Can you conceive of any more reason why there should have to be a guarantee of such rights in a state constitution?

MR. HOLDERMAN: Well, there are good many other practices in the State of New Jersey that are well recognized practices today, such as protection of property. Certainly, today we find the courts generally and strictly recognizing property rights, and yet you gentlemen are concerned—not this Committee but other Committees—about strengthening the clauses in the Constitution for the protection of property rights. Yet in our democracy, there is very little abuse of that property right.

MR. CAREY: There isn't anything in the New Jersey law today that prevents any man, or a set of men, from cooperating with these employees or employers, whichever it may be, is there?

MR. HOLDERMAN: There never has been. Neither has there been in the law of the United States, but labor has been forced to fight for a long, long time to get that right recognized.

MR. CAREY: I'll ask one more question. Does labor ask for anything else to be placed in the Constitution, other than that one clause which you now suggest?

MR. HOLDERMAN: For anything else? Oh, yes. We've asked for a lot of things. We've voiced our opinion on a good many parts of the Constitution other than those that I have outlined to your Committee today.

MR. CAREY: From your knowledge of labor, if that particular clause were placed in the Constitution, would you then be able to say whether labor would be opposed to the Constitution because it doesn't go beyond that?

MR. HOLDERMAN: I would not be able to say that because we have a democratic process in our organization, and that decision will be made through that democratic process. I will say this, however—it is my personal opinion that liberalization of the Bill of Rights and, I repeat this, liberalization of the amending process would go a long way toward winning the confidence of the members of the C.I.O. in this State to support the decisions of this Convention which will be presented to them in November.

MR. CAREY: I am just trying to get the facts. You've answered my question.

CHAIRMAN: Are there any other questions? . . . You may have the same question I have, Mr. Park. Go ahead.

MR. PARK: Perhaps you have heard the remarks of Mr. Kerney. You recall that I addressed a question to him with regard to this 20-year revision proposal and indicated that we in the rural sections have a little different problem relative to salesmanship. Now, would your organization be horribly upset if it were changed from 20 to 30 years?

MR. HOLDERMAN: I don't think I could answer that. I think I recognize, as Mr. Kerney did, that there may be political aspects

that have to be taken into consideration. I do feel quite strongly that if at all possible—I would simply repeat his words—each generation ought to have the opportunity of revealing this through a constitutional convention, and 20 years seems to be the generally adopted pattern for a constitutional convention. Whether or not an extension of another 10 years would make the difference between support or non-support, I am not prepared to say at this time.

MR. PARK: It might make a lot of difference in our salesmanship.

MR. RONALD D. GLASS: I'd like to direct this question to Mr. Holderman, Mr. Chairman. If the present amendment clause were eased somewhat and if the Constitution of 1947 were made less difficult to amend, wouldn't that be a selling point? Also that a complete revision would not be necessary every 20 years, possibly pushed on 10 years, to 30 years?

MR. HOLDERMAN: I don't think that one would have any relation to the other. We are living in a very dynamic age. Tremendous changes in our civilization have taken place within a comparatively short period of time. Scientists tell us that even more radical changes will take place in the coming years, and I think we ought to leave open to our children the opportunity to sit down, as you men are sitting down, and deliberate whether the Constitution in 1967 meets their needs, as you men are considering whether the present Constitution meets the needs of our generation today. I don't think that that would weigh against the other.

If I get the implication of your remarks about somewhat easing the amending process, let me add this: In 1944 the proposal which was made on the amending process, I believe, was for a three-fifths majority of a single session of the Legislature to pass a bill to submit the amendment to the people; after signature by the Governor, it would be submitted to the people at the next general election. At that time our organization did not consider that the three-fifths met the liberalization that was needed properly to balance the interests in this State. Mr. Park mentioned the problem that you have in the small counties. Well, we have a problem in the large counties in the relation of population to acres. We feel that the present veto power in the State Senate gives sufficient veto power to the small counties against any encroachments upon their interests or upon their rights, and that the three-fifths requirement would certainly more than over-balance the rights that your heavily populated industrial areas ought to have in amending the Constitution. I presume that was one part of your question, so that I'm sure that our organization would view the matter in the same light this year—that a three-fifths provision does not sufficiently meet the needs of industrial areas on the amendment process.

CHAIRMAN: Mr. Holderman, could I ask you a question? Feel free not to answer it if you think it's controversial. Most of the discussion about labor's right to bargain collectively revolves around, or apparently stems from, the philosophy of relationship between private employers and privately employed employees. Now, we also have associations or unions or combinations, or whatever you wish to call them, of public employees. Would you care to give us your views on how far that right of association should be projected or carried in the event the representatives of the public, the people, cannot get together with representatives of the public employees, and we reach a situation where we have an impasse and the public employees say, "Then we will have to go on strike?" Would you care to touch on that point?

MR. HOLDERMAN: I don't think so because we are not asking this Committee to incorporate any provision about the right to strike. We've asked for a provision guaranteeing the right to organize and bargain collectively. In the matter of public employees, I don't see any reason why such guarantees, the same guarantees, should not be accorded to them as are accorded to industrial workers who are employed by a corporation or an individual. They have grievances and other matters which they ought to act upon collectively, and the problem of the right to strike ought to be left entirely in the hands of the Legislature. I feel that they ought to be guaranteed the right to organize and bargain collectively to protect themselves against the spoils system, which is prevalent in our political life, and to give them protection or rather strengthen their demands and proposals for adjustment in their living standards and so on during such periods as we are undergoing now with this tremendous inflation.

I don't think I'd care to comment on their right to strike. There is a very wide difference of opinion as to whether there ought to be restrictions on that, but I think that ought to be left to the Legislature to determine.

CHAIRMAN: Thank you. Are there any other questions?

MR. HOLDERMAN: May I just add one word, Mr. Chairman? This question has been so controversial recently as to receive very special attention by Congress. I might comment on that just a moment by saying this: Even under the recent restrictive legislation that has been passed in Congress, there was the implicit recognition of the right to organize and bargain collectively. Do I make myself clear? So I think that even those people whom we consider are attempting to circumvent those rights still recognize the basic principle, the basic right, of labor to organize and bargain collectively on wages, hours and working conditions.

CHAIRMAN: Are there any other questions? . . . If not, we will

excuse Mr. Holderman. Thank you very much for your views, sir. I believe you have one more associate who wishes to testify, Mr. George Greenleaf? Is he here? . . . Mr. George Greenleaf of the Greater Newark C.I.O. Council.

MR. GEORGE GREENLEAF: Mr. Chairman, and members of the Committee:

I represent the Greater Newark C.I.O. Council comprising 110 C.I.O. locals, comprising 50,000 C.I.O. members throughout Essex County and the western part of Hudson County. We support the Joint Committee for Constitutional Bill of Rights and the various proposals for added articles to the Constitution; that is, the articles prohibiting discrimination because of race, color, creed, religion, or national origin in the laws of the State for education, for employment, and for religious corporations and associations and so forth. We wish to impress upon you the fact that we are affiliated with this Joint Committee for Constitutional Bill of Rights and our committee representatives have discussed with them these various articles that they submitted to you. The Greater Newark Council, C.I.O. stands behind them in the support of these proposals.

We wish also to say that we have before us certain provisions and suggestions for the easing of amendments to the Constitution. We are sure that you will admit that this body is not so sagacious that we can determine here this afternoon, for instance, just how my grandson 30 or 40 years from now will interpret this Constitution that we are about to put before the people of the Commonwealth of New Jersey. We feel, therefore, that our Constitution should be so broad that the people of this State would be permitted at any time to change the Constitution, in any form, in any fashion, they see fit, because, after all, it is the Constitution of the people. They are the body politic by whom these laws are set up.

It has been told to me from various sides that we should not include too many specifics. On the other hand, I have received certain other legal advice that it is the policy now to include certain specifics in the Constitution. Since I am not an authority on constitutional law, I can't very well tell you about that. But I do say that if it is necessary, then, that we omit certain specifics in our Constitution, that the method of amendments, the amendment process, should then be facile and clear.

There will be many questions raised after this Constitution is accepted; perhaps in due time social agitation will arrive at the point where the rights of minorities will be realized everywhere. I believe that the people in America are gradually becoming educated socially. I believe in America. All that I have acquired, all that I have achieved, all that I have suffered, all that I have endured, has been American, and I believe in America and I stand by the principles

of democracy. When the process of amendment is difficult, however, the government is taken away from the people and then you are faced with the possibility of certain groups being in control of our government. We say that this is a bad factor. We say that there should be some method provided whereby the people can decide after a certain period of years whether or not they seek amendments to the Constitution, or whether or not the entire form should be revised.

Under the plan we have had thus far in the revision of our Constitution, we have provided for special elections. We consider this a very bad factor because of the fact that there is little interest shown in such an election, with the result that a minority group is deciding for the majority what type of Constitution we shall have. We think this is a bad factor for real democracy.

Perhaps I could tell you a story that reminds me of the situation of which I speak, that is the lack of interest that is being evidenced, even now, in our Constitution despite the fact that it is true that there has been much newspaper publicity, and there has been much discussion by various organizations. This morning as I came down here I met a friend of mine, a very old friend of mine. He and I worked on W.P.A. together. He asked me where I was going. I explained to him that I was going to the Constitutional Convention. He said "Where, to Washington?" I said "No, to New Brunswick." He said: "Do you mean to tell me that after all these years they are just getting around to writing a Constitution for the State of New Jersey?" That to my mind is evidence of what the average person knows of what we are about today in drafting this Constitution.

Now, we of the C.I.O. have certain recommendations we wish to submit to you for the easing of amendments. The present amendatory clause of the Constitution has three serious defects. The first defect is the requirement that a proposed amendment be adopted by two successive legislative sessions. We fail to find any need whatever for such a rigid provision. Surely, the concurrence of both houses of the Legislature, the Governor, and the people, is a sufficient safeguard against hasty and unwise amendments. The provision for adoption by two successive sessions has proven in practice over the years to be not so much a safeguard against hasty amendments as a complete bar to all amendments, regardless of merit.

We also find that the requirement that amendments be submitted at a special election is unwise and unnecessary. The argument made for this provision is that it will separate proposed amendments from the political partisanship attendant upon the election of officers. We do not think that there is any validity to this point. Where amendments are of a political nature, political views will be taken

and stressed, whether they be voted on at a special or general election. Nor would we have it otherwise, since American democracy functions through organizations and expressions of political parties. If the amendment is one of a bi-partisan nature, then the fact that it is voted upon at a general election will not present necessary bi-partisan agreement. The only real effect of requiring special elections for amendments is to reduce popular interest and popular vote on the proposed amendment. This is a condition which is surely a far greater danger to the proper functioning of democracy than the expression of political views upon proposed amendments. A second and while an important reason, not a principal objection to special elections, is the cost thereof.

The third provision to which the C.I.O. objects is that requiring a lapse of five years between submission of amendments to the people. We find no justification whatever for such a provision. The people should be free to pass upon a proposed amendment at any time necessary support, either legislative or popular, can be obtained. This provision, again, is not one with which we can safeguard the amendatory process, but rather it is one which operates to prevent necessary and desirable amendments. It cannot be said, in any case where the Legislature and Governor have accepted a proposed amendment as desirable to submit to the people, that the people should not be permitted to pass upon it merely because the question has been defeated at some time within the past five years.

The New Jersey State Industrial Union Council believes that two proposals are required to have a reasonably flexible and proper amendatory clause. They are:

(a) Submission of any proposed amendment to the people at a general election that has been passed by simple majority in both houses of the Legislature, at one session, and signed by the Governor, or if rejected by the Governor, repassed by two-thirds or three-fifths of both houses at one session over a veto;

(b) Submission to the people at a general election at least once in every 20 years of a proposal calling for a constitutional convention to be convened to examine and generally revise the Constitution, or the calling of such constitutional convention at any time when both houses of the Legislature and the Governor concur on the necessity for the convening of such a constitutional convention.

The first of these proposals is essential so that particular amendments to remedy particular defects of the Constitution, revealed by the passage of time or changing conditions, may be adopted when necessary. A necessary concurrence by the majority of both houses of the Legislature and the Governor, or of both houses of the Legislature by two-thirds or three-fifths vote where the Governor does not

concur, is a reasonable safeguard to hasty and ill-considered amendments.

The New Jersey State Industrial Union Council reiterates that both points, (a) and (b), are, in its opinion, the minimum requirements for acceptable amendatory provisions. In addition to the above two points, the C.I.O. believes that it is desirable to incorporate two additional possible methods of constitutional amendment. Just as the Legislature may, by repassage of a proposed amendment over a gubernatorial veto, submit a proposed amendment to the people at a general election, so we urge that the Governor may cause to be submitted to the people at a general election any proposed amendment which is passed by one house of the Legislature but defeated in the other. This proposal would make it possible to submit to the people any proposed amendment which is concurred in by any two of three of the participating branches of the government, that is, the two houses of the Legislature and the Governor.

The C.I.O. believes that this proposal is peculiarly apt to the situation obtaining in New Jersey where 11 Senators from small counties, in a 21-man Senate, may be sufficient to prevent submission to the people of an amendment which has the overwhelming support of the people of the State generally and of the Legislature and the Governor in particular. Such a provision is made necessary by the continuance of the present undemocratic legislative structure guaranteed by the terms of reference of this Convention.

As far as further proposals of amendments to the Constitution are concerned, we have other representatives of labor here who will submit and discuss with you the various proposals of the C.I.O. There is one point I wish to leave with you on these proposals that we are urging that you consider, and it is this: There have been various minority groups here today, perhaps yesterday, speaking to you of various rights of minorities. This is the thing we want to impress upon you: that these minority groups are now unified. Therefore, we are not now speaking for a minority, of labor, of the Negro race, and various other minority groups, but we feel we are speaking to you as representatives of the majority of the people of the Commonwealth of New Jersey.

CHAIRMAN: Are there any questions? . . . Go ahead, Mr. Carey.

MR. CAREY: I've been trying to summarize in my mind what it is you want on your report. You really are raising your hand on three things, I take it. One is a proper labor provision in the Constitution. Right? May I ask, do you include in your recommendation a provision to cover peaceful striking?

MR. GREENLEAF: Do you wish me to answer that now? . . . As Mr. Holderman has stated, we feel that the Legislature is capable of

settling such issues in future legislation. However, we do feel that in this Constitution we should include certain basic principles of citizenship, and one of the most important of these basic principles, we feel, is the right to organize and bargain collectively.

MR. CAREY: Well, you didn't answer my question yet. In your recommendation, do you include the principle of peaceful striking to be placed in the Constitution?

MR. GREENLEAF: I thought that I explained, as far as the question of peaceful striking is concerned, we leave that to future legislation. However, it does not necessarily mean that because we have the system of collective bargaining there may necessarily be a strike. That is the purpose of collective bargaining—to avoid strikes where possible.

MR. CAREY: All right. The other proposition is that you want an easier way to amend the Constitution than we have today?

MR. GREENLEAF: That's true, yes.

MR. CAREY: Because of the impracticability under the present circumstances. Is that right?

MR. GREENLEAF: That's right.

MR. CAREY: Don't you realize that the last amendment in this State—it was a special amendment, adopted only a few years back, four or five years—was adopted at a special election without any delay, except for a year and a half time that it took to put it through? There was no trouble about putting through that amendment, was there? That was the race track amendment.

MR. GREENLEAF: This is what we consider on that principle. There are certain topics, there are certain discussions, there are certain legal situations that might arise within a State. We feel that if this period is extended, that at one particular time the people might not know the full concept of the precedents with which we are trying to amend our Constitution and we feel that if there is a prolonged period that perhaps there may be a chance where certain groups may come in to influence the voters.

MR. CAREY: There is one other question. You suggested at the finish that you would like an amendment process as fixed by law which would take away from the Senators in the rural counties of our State the powers they have been exercising all along under our present Constitution, by providing for an initiative and referendum program that would make the consideration of their status as individual Senators of the counties next to useless. Is that right?

MR. GREENLEAF: No, I think you misunderstand me. That was an added proposal. We are not asking that we dispense with the principle of having the Senate veto an amendment. We are asking that there also be added this principle of popular submission of amendment to the State. We are asking that the dual principle be

established.

MR. CAREY: Now, can you tell me one other thing? It may be in your report. I haven't read it. Is there anything that labor wants in our State today that it doesn't get?

MR. GREENLEAF: We feel, as Mr. Holderman has answered you before on that, that there are certain basic principles of democracy that we must include in our Constitution. We should not leave to future legislation certain basic principles which bitterness or which politicians may change, or interchange, during the space of time. We are standing for the principles of democracy and, therefore, we feel that included in our Constitution should be those certain basic principles. One of these basic principles, dearest to our heart, is the right to organize and the right to bargain collectively.

CHAIRMAN: I think in answering your question, Mr. Carey, the witness did say that he favored a process whereby if it passed either house and was approved by the Governor, it should go to the people. That is, if a proposed amendment passed either house of the Legislature.

MR. GREENLEAF: I might say, Mr. Chairman, that is true. We are suggesting, as I said before, that we have this dual policy of submitting amendments. We do not wish to hinder, hamper, or take away from the rights of certain Senators in these small counties, but we do feel that we should include also certain provisions for the proper submission of amendments to the State Constitution.

CHAIRMAN: Are there any other questions from the members of the Committee? . . . If not, thank you, Mr. Greenleaf.

We will hear at this time Mr. Charles H. McSpirit of the New Jersey State Commanders' Conference on Constitutional Revision Convention. I believe Mr. McSpirit wishes to speak briefly and be followed by other speakers from his group.

MR. CHARLES H. McSPIRIT: Mr. Chairman, at the outset, I just want to outline the reasons for our establishing and organizing this group of veterans' organizations. When the thought of revising the Constitution of the State of New Jersey first came up before our Legislature, disabled American veterans mandated me as their department commander to contact the department commanders of the various veterans' organizations in the State of New Jersey, with the thought in mind that we present a united veterans' program to this Committee and the delegates of this Convention for their approval. Communications were sent out to the various veterans' organizations. Army and Navy Unions, Disabled American Veterans, Veterans of Foreign Wars, United Spanish-American War Veterans, the Marine Corps League, Jewish War Veterans, and the Catholic War Veterans responded. A program was drawn up and was taken back to these respective organizations for their approval, and after their

approval it was taken back to the State Commanders' Conference again and the program was sent to each delegate of this Convention.

Now, we are here today to present this program to you for your approval. The conference has delegated the past National Commandant of the Marine Corps League, Alexander Ormsby, who is also the dean of the John Marshall School of Law, to represent this organization here today in order that you will not be bored with a large delegation from our group. We also have with us a representative of the Veterans of Foreign Wars, Charles Becker; National Service Officer of Disabled American Veterans, John W. Bill; and we have the Department Commander, George Milligan, of the United Spanish War Veterans. So, at this time, with your permission, I would like to turn over the microphone to our representative, Dean Ormsby.

CHAIRMAN: Are there any questions? . . . I guess there are none. If there are, we will address them to you later.

MR. ALEXANDER ORMSBY: Mr. Chairman and members of the Committee:

At the Convention of the New Jersey State Commanders' Conference on Constitutional Revision held in Newark on Friday, May 16 last, the following procedure and conclusions were decided upon: The representatives of the organizations that have just been named by the commandant, and representatives of these so-named veterans' organizations met and considered plans that were announced by his Excellency, Governor Alfred E. Driscoll, and the members of the New Jersey Legislature, for a Constitutional Convention. It was felt that since the veterans' organizations of the State of New Jersey were not represented as such, it was the consensus of those present that one of the strongest voices in our State is that of the veteran who helped to preserve our democracy. On behalf of these organizations, Governor Driscoll was advised and the officers and delegates of this Convention received copies of the proposals that I shall later narrate. It was felt by the veterans that these constitutional proposals would not only protect our veterans' rights and privileges but would guarantee them if they were inserted or incorporated in our Constitution.

We, therefore, submit them to this honorable body and at the same time offer to present our representatives who are here today. We feel that the rank and file of the people of our State are wholeheartedly interested in seeing that the veterans receive their just consideration.

The first proposal that was suggested is no concern, I believe, of this Committee. It must go before another Committee.

Adverting to proposal two, it may be somewhat lengthy. Because of its scope it was necessary to make it as extensive as it is. Veterans

feel that appointments and promotions in the civil service of the State and all of the civil divisions thereof, including counties, towns, cities, villages, townships, school districts, or any commission created by one or more municipality, county, or the State, shall be made according to merit and fitness, to be ascertained as far as practicable by examination, which as far as practicable shall be competitive; provided, however, that any member of the armed forces of the United States, who served in any war of the United States, including all Indian wars, campaigns, insurrections, or uprisings, or any military or naval service of the United States in connection with the American punitive expedition or other intervention, campaign or trouble, with the Republic of Mexico during the administration of President Woodrow Wilson, who is a citizen and resident of this State and was a resident at the time of his or her entrance into the armed forces of the United States, and was honorably discharged, or released under honorable circumstances, from such service and who was disabled therein to an extent not less than ten per cent—furthermore, that such disability was received as a direct result of such service and must be certified by the United States Veterans' Administration to be in existence at the time of his or her application for appointment or promotion—such person shall be entitled to preference and shall be appointed or promoted before any other appointments or promotions are made, without regard to his or her standing on any list from which such appointment or promotion may be made.

Any member of the armed forces of the United States who served therein at the time of any war, including all Indian wars, campaigns, insurrections or uprisings, or any military or naval service of the United States in connection with the American punitive expedition or other intervention, campaign or trouble with the Republic of Mexico during the administration of President Woodrow Wilson, who is a citizen and resident of this State, and was a resident at the time of his or her entrance into the armed forces of the United States, shall be entitled, after such disabled members of the Armed Forces shall have been first referred, to similar preference and appointment and promotion. They shall enjoy tenure in office, position or employment, pension and retirement rights and privileges. The Legislature shall be directed to enact appropriate laws creating such pension and retirement funds and privileges. Such benefits shall not be diminished or impaired, except by constitutional amendment.

This is proposal three: Preference shall also be given to wives and widows whose husbands have been killed or permanently disabled as the result of serving their country in any war, campaign, expedition, or insurrection of the United States. Their disability,

too, must be recognized by the United States Veterans' Administration. (*Reading*):

"RESOLVED, that in behalf of the New Jersey State Commanders' Conference on Constitutional Revision, that the foregoing proposals be considered, approved and imbedded in our Constitution in order to guarantee the veteran of the State of New Jersey his or her just due, and the same may be only removed or amended by a constitutional amendment passed upon by the people of our State."

Let me respectfully advise you that we hope and pray that God will grant that the final document coming out of this wonderful body of leading citizens of our State will bring credit, honor and distinction and happiness to the people of our State.

It has been the consensus, too, that the opinion of our veterans is that they don't want any charity. They merely urge that the men and women who served in the armed forces of our State, numbering over 500,000, be given just recognition and a square deal. As we advert to figures, 1,250,000 were wounded in this past war, 300,000 made the supreme sacrifice, and again turning to our own State, I have been given to understand that over 80,000 World War II veterans have been wounded and are now drawing compensation in our State for disability incurred in the line of duty during their wartime service. I am also reliably informed that 9,000 veterans of World War I are still receiving compensation for disabilities which were incurred in the line of duty during World War I. In this State, we have over 1,000 amputees. We have over 100 double amputees in this State, and we have approximately 346 paraplegics.

Recently, there was introduced in our Legislature a bill, No. 62, to give \$500 to each paraplegic. This bill was signed by Governor Driscoll. Of course, it brought a lot of happiness to these men and to the veterans. But, Mr. Chairman, we don't know when some citizen might question the constitutionality of such an act, and perhaps a lot of good that had been accomplished would be overthrown because the law might be declared unconstitutional. Hence the anxiety expressed by all of these organizations for just such matters. We feel that the rank and file of our citizens desire that the veterans' rights and privileges be protected, irrespective of any political faction. If it weren't for the fact that 15,000,000 men and women made the sacrifice that they did, maybe we wouldn't be here today molding this new Constitution. Looking back to past experience, we can recall hearing people state that they were going to assure fine things to the returning veterans, particularly of the last war. In the passing of time these promises were not fulfilled, nor were the prospective benefits granted. They vanished. Very frequently, due to the fact, too, that there were no constitutional provisions in our present Constitution, some well-intended law that had been passed by our Legislature and signed by our Governor was nullified because the courts

of our State had to declare that legislation unconstitutional. Very frequently, due to the fact that there were no constitutional provisions in our Constitution, many benefits were lost. Our courts and our judges were striving to carry out the will, perhaps, of the Legislature, but they were prevented because there was no provision in our Constitution to give them any sound, legal basis.

We are not unmindful, as a group of veterans, that the financial structure of the State is an important item to consider. No group of veterans from this organization—and I feel all the veterans of our State feel similarly—want certain privileges and certain rights given by our State at the expense of impairing the credit of our State, or the financial structure of our State. But we are also mindful that in many cases in the past, when some of our veterans were granted preferences and privileges, when they upheld their contentions, they had to go to court, put to expense and litigation, only to find that the law they were operating under was unconstitutional. We often heard that when the war is once over and boys and girls come back, everything will be done for them. We feel, therefore, that this is the time and this is the place to make requests that we hope are reasonable and in keeping with the spirit of the delegates of this Convention and the people of our State, numbering a little over 4,000,000.

Our chief desire today is first to protect the disabled veterans. That's the spirit of all these veterans' organizations that are present here today. We feel that our first duty is to those men who carry permanently on their body tangible proof of their sacrifices from this war, and that they should receive preference. That preference should prevail in all public employment. We must make them contented and happy and not force them to sail on the seas of uncertainty, which they have done on many an occasion in the past. If the average citizen would take a visit with me to any veterans' hospital, pick any one that you want, and just look at the suffering and hear the painful cries and look at some of these men who have permanent scars to carry for the rest of their lives, these injuries sustained by these heroes, I am sure they would immediately want to make sure that their situation is no longer a precarious one.

We are next concerned with the honorably discharged veteran whom, fortunately, God sent home in sound physical shape. On an average he gave up many of the best years of his life in order to preserve our country. Therefore, we think these veterans should be entitled to certain benefits, as outlined in that proposal concerning preference.

We feel, too, that with reference to all of these men and women that were given priority to die: Why shouldn't we give them priority on some of the benefits now?

The next point that I have here is of no concern to this Commit-

tee. But, I venture to say, is it unreasonable to have a property exemption, either applying to real or personal property, of \$2,500? Let the veteran apply that exemption either to personal property or to the real property, whichever he can apply it to. We know that time is of the essence in this matter. The veteran today needs these privileges now, more so than in the future, although he may need them in the future also. He, at present, is endeavoring to start his business career, pursue his education, trying to establish his home and family, and at the same time he is generally trying to take part in the welfare of his country. We read daily where millions of dollars, millions of pounds of food, are leaving our shores to rehabilitate even our enemies. Why can't we pause to see to it that we have a primary duty to our veterans and their families and help guarantee them our good faith by embedding in our Constitution the privileges which they seek? Appropriate pension rights should also be contained, because as the veteran advances in the stages of his life, he has something started and something to look forward to.

I am sure that the people of this State will do their part if they have an opportunity to consider these all-important proposals. We are one of the 13 original states. Let New Jersey take the lead in these matters. The veterans of all the wars of our State have never failed in patriotism and loyalty. They are not going to fail now and, please God, they'll never fail in the future.

I appreciate and all the members that are here today appreciate the fact that there is one fellow here, Mr. Bill, who has 37 pieces of shrapnel in his body from the last war. He's walking around with those 37 pieces of shrapnel and was 18 months in a hospital in France. It isn't any picnic. But for 25 years he's been fighting to help veterans. Why don't we take him as an example?

Your assignment is not an easy one. I am sure you, as earnest delegates, without exception are all striving to do your very best to give posterity a Constitution that will stand like our United States Constitution, a cornerstone for liberty and justice for all. Remember, veterans helped establish the beginning of our country. Why not place once and for all in our new document a statement of rights and privileges for veterans that shall be a bar to any political influences in the future and serve as security for their future welfare?

I sincerely appreciate, Mr. Chairman, the patience and kindness of the members of this Committee. I have been here all day watching you trying to give all of us a full and complete opportunity to be heard. It is by no means easy. We have over a half a million men in this State of ours, counting both World War I and World War II but not counting their families, and I am sure that they join with me in thanking you for your kindness to us here today.

CHAIRMAN: Thank you. Are there any questions from mem-

bers of the Committee? . . . If not, we will excuse Mr. Ormsby.

Mr. Charles Becker? We have six or seven more people who are scheduled to be heard. The Committee wants to hear them all and we want everyone to have time enough to give full expression to their views. However, we ask that you remember that time is running against us now and please try and condense your views without doing an injustice to them.

MR. CHARLES BECKER: Mr. Chairman, and members of the Committee:

I'll certainly try to shorten my address to you. May I say as Judge Advocate—it's a fine title, but I can assure you that I'm not on the payroll of the Veterans of Foreign Wars. I do not come here as a paid lobbyist to speak on behalf of the veterans of New Jersey or these members who are affiliated with the Veterans of Foreign Wars.

At our Convention in Asbury Park last month, the 18th to the 21st, we went on record establishing a permanent veterans' revision committee. We did it because our lawmakers are now in session for the purpose of revising our Constitution. We came here because we are invited. We are not asking for anything but what the veterans are already receiving. But we do want protection. I think that you are going to give that to them when you go into the revising of this Constitution. We are asking, and you have that right, to give to the veterans the right, privilege and preference. They are getting that now. We want to make sure that in the future the veterans will have something to look forward to. We do not want to sit in conference with those who in the past have said that they represented the political representatives of our great sovereign State. We want to make sure that in this Constitution a provision will be set forth wherein some 50,000 veterans of the foreign wars of this State, members of over 335 posts—and they are continually increasing—will be in a position such that they are not interested, as far as pure politics are concerned. We are interested in the political set-up of our State, and no question about that. But in the resolution that was presented to President Clothier and Secretary Oliver Van Camp on July 3, we enumerated these principles, and we ask that you give same your consideration.

We say notwithstanding anything contained in this Constitution, the Legislature shall have power to grant preferences, privileges, and exemptions—we'll take taxation up tomorrow with another Committee, so we are not concerned about that—to persons serving, or who shall have honorably served in the armed forces of the United States of America in time of war or any campaign, expedition or insurrection, their widows or the wives of such persons who are disabled. They do really get that, and they have fought hard for over 20 years to get that consideration from the public at large.

Now we are asking that you put that in the basic law and make it part of the Constitution. We are not asking any too much. I don't think it can be construed as class legislation. We're not asking you just what the preference or the privilege or the exemption should be. That will be a matter for the members of Legislature to take into consideration, if and when they are willing to present laws to that effect. We know today that many of the veteran laws, if put to the test, would be construed to be unconstitutional. We didn't make the law, but we adhere to the law. We're law-abiding citizens. We're always ready and willing to do a job and the record of this war really showed that the boys went out—not that they are asking just because they went out to protect their country and their loved ones—they went out to do what they were legally obligated to do, just as you gentlemen here are legally obligated to do what you think.

We know that you know what is the right thing to do. Therefore, we ask that when you go back in session, give the boys the consideration they are entitled to. They are not asking for charity; they are not asking for money. They just want a little bit of recognition, just as you want recognition. You sought this position through the election of the people, and we did the very same thing. We went out and did a job. I didn't in this war; I did it in the first one. But I am talking for those youngsters in years who are really entitled to consideration. We're here to tell them that we appreciate it, not in mere words, and that we have begun to realize that they're being forgotten.

I don't want to go into telling you what I see as chairman of hospitalization when I go around to the hospitals and see these boys. Why, your heart bleeds looking at the condition. But we are only asking you to recognize us. It's not a grant, it's a privilege. We are asking that you recognize the obligation. We wouldn't be here if we lost the war. We know what our enemies did and we gave them their just desserts, and we are just asking that you, under the circumstances, give these boys something. We are still giving to those in Europe who still are not appreciative. We give them of our material, money and wealth. We are only asking you to give us the right to secure a position and know that we are secure.

There are many provisions on preferences and privileges, and we think that like civil service they should remain on our statute books, and we are asking that you absolutely take care of it, and I know that you will. I am not here to say that the boys of this war are not receiving the consideration that they are entitled to. Our legal representatives in Washington are certainly showing that they are representing and giving the boys what they think they are entitled to. Today we have one pamphlet with almost 100 pages of veterans'

laws which give them rights and privileges that we are asking you to recognize here today.

I am not going to burden you any further. I know that they will get that consideration and we are not here opposing the change. I think there should be a change, and I can assure you that if you will go along with us, we'll do everything that we possibly can to help put it over. I was asked by one connected with the revision committee: "Well, Charlie, would you go out and speak for it?" I said, "Now, when we get through with it, we'll talk that over." But I can assure you, if you will only give the boys what they are entitled to, we'll go out and do the very next best thing, too, to hope to make this the success that you are here trying to make it.

CHAIRMAN: Thank you. Are there any questions?

MR. GLASS: I have a question, Mr. Chairman. I am not putting you on the spot now, because I am a veteran myself, and I would like you to answer this question if you can.

MR. BECKER: I'll try.

MR. GLASS: Is there any one clause in the Constitution that you would like to have rather than the proposal that you made today? Is there any one clause that you would like to have? Could you word that for us very simply?

MR. BECKER: I was mandated to come down here and tell you just what I did. I think that privilege and preference are practically one. The word is comprehensive in all of its capacity and you can go into many things that it would give. The other matter, as far as exemption is concerned, they're getting now. To take it out, I think I wouldn't be asking too much—I don't think we should take out any one of the three. Preference they get under civil service rights. They have to be educated, they have to work hard, they have to study, they have to pass. In preference, privilege, etc., I don't know just what other words I could add for the three we are also receiving. But, I know that we are not like the group that came down here yesterday, who told you in plain words that, "We are Communists and we are going to let you know that." I know that some of the members of the Committee were ready to walk out on them and I don't blame you. We are here speaking for America and Americans.

MR. GLASS: Well, I am sympathetic to your point of view but, facing facts squarely, I think we might have a difficult job on our hands in getting the complete picture that has been presented in the proposals put before this Committee. I think that I voice the point of view of the Committee. I haven't canvassed the members, but I think they are interested in basic principle rather than specific commitments that might be legislative in character. I am interested in knowing that, if there is any one clause that should be included, as far as our Committee is concerned, what it would be? I think

you have answered my question to a degree and I think you have helped me as far as my question is concerned.

CHAIRMAN: Are there any other questions? . . . There are no other questions, sir. Thank you.

Mr. John Bill, of the same group.

MR. JOHN BILL: Mr. Chairman, and members of the Committee:

I represent the Disabled American Veterans. I'm here today to endeavor to influence, if at all possible, that a disabled veterans clause be added in the new Constitution. I want to relate to you very clearly and very briefly, if at all possible, what no doubt many of you have heard of veterans' appeals, all for disabled veterans. We of the Disabled American Veterans who have been organized now for 27 years to do our own work, are well able and well qualified to lay before you our proposal, and we feel that we know best what we desire and the difficulties and complications we adhere to because of our disablement.

We say to this Committee that there should be written into this new document preference for disabled veterans in appointments and promotion, and likewise in retirement and pension rights. You must consider this very seriously. I know that yesterday one of the major organizations presented to you a proposal. We don't believe, and in my long years—27 years going to Trenton on matters for disabled veterans—I don't feel that I am satisfied and willing to continue to trust the Legislature. We have had many difficulties and many obstacles in our way because the Legislature and other veterans' organizations haven't always agreed. They will tell you, on the surface, that they are for the disabled man. When you get in the cloak room, or in secret conference, we find that the disabled veteran is the goat of them all, but when it comes to sell him to the public he is the *prime facie* case.

I say the Legislature of New Jersey hasn't done too well with the disabled veteran. Look at your law! What do you have for a disabled veteran of New Jersey; what does he get? I want to say to you, you can make the research that we did—and it was expensive to do it—but we have had over 1,000 cases in our courts where disabled veterans have contested their rights for position. And what happened? We lost in most of the cases. We considered what was said—the act was unconstitutional, there was no provision in the Constitution. "We sympathize with your cause, but the Constitution is silent, and therefore we cannot go along with you." Here we have an opportunity—as it has been said, and you heard, people have died for it, people have bled for it—here you have an opportunity to do the right thing, by justifying a specific clause in the Constitution, not that the Legislature "may," but the Legislature "shall"

enact the necessary laws that will give disabled veterans preference in their appointments and promotions.

And do it so that a disabled veteran must qualify by merit and fitness, that a disabled veteran must understand the job that he's competing for. In other words, it's an open, competitive examination. He doesn't just go in there and say I'm a disabled veteran, I want the job. He must compete against the rank and file, and when he does pass this examination, he should have the sole opportunity and right to be given that preference for which he fought. I'm sure that you gentlemen of this Committee want to give him that. It's not an easy matter. I know that others don't agree with our cause. They won't say it, perhaps, openly; they'll write you a letter. But we say to you openly, and we say it very frankly, that we of the disabled veterans and this unit that is here represented, who represent the majority of organized veterans, feel that we have a just cause.

We of the unit, as outlined by Commander McSpirit, represent the majority of veterans in organized units. And since we're talking about organized units, we feel that we of the Veterans of Foreign Wars, of the Disabled American Veterans, of the Catholic War Veterans, of the Jewish War Veterans, and of the Spanish War Veterans, have the majority of organized membership in New Jersey today. We say that all others—and all of us are going to be fair—if you want to do the job that we feel you want to do for the disabled man, the only simple way, and it's a very simple clause, you just merely say that the disabled veteran shall receive preference in appointment and promotion upon qualification in any civil service examination held in this State. And then give the veteran who hasn't been wounded the same right, providing there's no disabled veteran.

Now, we've got to be fair, because I know many of you in your respective towns, feel and hear the other units say, "This is for disabled veterans." And yet, what are they doing for disabled veterans? How many here have known the cause of the men who are still in hospitals? How many here worry about the men who are in these respective hospitals? Very few. It takes a disabled veterans' organization, or other organizations, to understand. We try to have you understand very clearly that we of the disabled veterans believe in a constitutional revision; we believe that with a just clause in there giving the disabled man his just due that you will have accomplished a real success. Now that isn't asking too much. We feel that other groups who have presented a greater demand on you, haven't made the sacrifice that we have made. If it weren't for the sacrifice of our group who are still in hospitals, we wouldn't be here today. We don't ask too much, we're not selfish; we feel we're honest, honest in our demands.

Only yesterday, General Omar Bradley in Washington, D. C., pre-

sented to the Appropriations Committee a request that Congress appropriate sufficient funds to assist paraplegics who are paralyzed from their hips down, to the extent of \$5,000 each, so that they may have a special home. We owe that to them. The State of New Jersey recently had a law become effective, but you have the possibility of some crank questioning the constitutionality. Unless you do something by constitutional mandate, you always have the possibility that there is a question as to whether or not it is constitutional. I remember during the war, in the City of Newark we had a case where, for the first time in 75 years, the veterans' preference was tested by a veteran because of a question raised and a misunderstanding of politics. Because of the war, I think that the veterans' preference was safeguarded. I say that if that case were to be tried today, I think the Court of Errors and Appeals would have declared the act unconstitutional. But it was a shooting proposition and everyone over-patriotic, and they did not dare tell the boys who were then dying on the battlefields the world over that the act in New Jersey, the law that you left behind, was unconstitutional. So the Court of Errors and Appeals sustained the act, but we hear it today, every time a veteran gets a position: "I think the act is unconstitutional; I think I'm going to take you to court." The veteran is always in fear that someone is going to court.

Now, you feel that you want to do a just act. There are some of you here who have been members of the court. There's Judge Carey; there's Judge Delaney of my home county who just retired after 25 years of wonderful service. He could still be on the bench. Well, they said he was old, but he's not too old to be here and decide on the future law for another generation. But you always have to fear that you're going to court, the court may not understand the problems, the court doesn't understand the case. We say to you here today, you have the right and you can justify that, and with that I'll answer any question you want to ask. I don't want to take any more of your time.

CHAIRMAN: Any questions from members of the Committee? . . . No questions, Mr. Bill. Thank you.

The New Jersey Council of Churches, through Mr. Bowen, their general secretary, recommends providing for an effective means of amending and revising the Constitution itself; also his group endorses the clause (*reading*):

"Citizens shall have the right to organize, except in military or semi-military organizations not under the supervision of the State, and except for purposes of resisting the duly constituted authority of this State or of the United States. Employees shall have the right to bargain collectively through representatives of their own choosing."

Another point endorsed is as follows (*reading*):

"No person shall be denied the equal protection of the laws of this

State or any subdivision thereof. No person shall, because of race, color, creed, or national origin, be subjected to any discrimination in civil rights by any other person or by any firm, corporation, or institution or by this State, or any agency or subdivision of this State."

Mr. Bowen offered this method of presenting his material into the record in order to save time, because he felt the subject matter had been covered by others.

Mr. Widener Titzck of Camden wishes to appear at this time.

MR. WIDENER TITZCK: I represent the New Jersey taxpayers group organized to maintain a separation of church and state. I represent a cause which has been a basic principle in the framing of the Constitution since the time of our original New Jersey Constitution of 1776, and Virginia's great Declaration of Rights of the same year. Under the leadership of James Madison and Thomas Jefferson, this clause of maintenance of separation of church and state became incorporated in the United States Constitution under the First Amendment and was made applicable to the states by the 14th. (I say that if you have copies, you can follow me; it might help the Committee.)

Specifically, as I said, I represent the New Jersey taxpayers organization which was organized at a public mass meeting held in Convention Hall, Camden, N. J., on May 15, 1947, to protest the recent decisions of the New Jersey Court of Errors and Appeals, and the Supreme Court of the United States in the now famous case of *Everson v Board of Education of Ewing Township*, holding that public tax funds may be used for transportation of students to parochial schools. This case stems from the provision of chapter 191 of Laws of 1941. Without taking time to read it, in essence the statute provides that wherever any board of education authorizes contracting for the transportation of students to the public schools, they must, also, pass authorization for transporting students going to any other school on the same route, except schools operated for profit. This means that they must, if they're sending students to any public school, authorize and pay with public money for the transportation of students to Protestant, Catholic, Jewish, or any other religious denominational school that may be established.

A stream of protest has arisen across the country as the result of a 5-to-4 decision of the United States Supreme Court. All believers in our democratic form of government, and particularly those in New Jersey, have had their eyes opened to a serious threat to the wall of separation of church and state which was intended to be erected in both our Federal and State Constitutions. The *St. Louis Post Dispatch* of February 13 said (*reading*):

"If it were a unique and isolated instance, the Supreme Court in the New Jersey parochial school case might attract little attention, but this decision will not rest on some remote judicial plain. It lends abrupt sup-

port to an increasing and subtle encroachment on the separation of church and state.”

Parochial schools do teach religious doctrines. Public money used in any way to aid them does aid religious causes. This contradicts the purpose of the Bill of Rights which, Justice Rutledge said, was to create a permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding any form of public aid or support for religion. These statutes do not directly void the ancient principle. They nibble at it. Where the problem was clear, the Missouri Supreme Court held in 1942 that public money may not be used for help of any religious sect in education or otherwise. Where the issue was not too sharp the United States Supreme Court held in 1930 that states could supply public text books to parochial schools. The fundamental freedoms of thoughts and of conscience must never be risked for such a purchase. In the end we think that view will prevail with the courts.

The *New York Times* also remarked upon the vigor with which four justices of the Supreme Court dissented from the legal reasoning, historical interpretation and final conclusion of the other justices in the New Jersey case concerning publicly paid transportation of children to parochial Catholic schools, suggesting that, like the portal-to-portal issue, it was only the beginning of a grave controversy. This implication arises from the fact that while the majority conceded that the New Jersey statutes specifically providing transportation at public expense of children in non-public schools approaches the verge of a state's constitutional power, the minority contended that under the majority's validation of the law, states may go further. If the state may aid these religious schools, it may therefore regulate them.

I could give you innumerable comments of press, periodicals, radio and the like, but to save time I've attached hereto Exhibit "A," a very good analysis of the decision by a magazine for religious freedom entitled *Liberty*. I commend you to read this exhibit only if you do not find time to read the full United States Supreme Court majority and minority opinions found in 67 *Supreme Court Reporter* 504.

Justice Case, now Chief Justice of New Jersey, in writing the minority opinion of our New Jersey Court of Errors and Appeals, declared the New Jersey act in question violative of five different provisions of our New Jersey Constitution, including the school fund provision found in Article IV, Section VII, paragraph 6, and the Bill of Rights provision in Article I, paragraph 3. Justice Case said (*reading*):

“The operation of a church school under the direction of and teaching the tenets of a church is a primary function whereby that church puts its impress upon and holds the children of the church to its faith. The pa-

rochial schools are a part of the administration of the church under whose control they are."

Since by judicial interpretation of the highest courts of New Jersey and the United States, neither the Bill of Rights, school fund clause, nor any other provision has been considered sufficient to hold the New Jersey act involved unconstitutional, our Constitution needs strengthening to make this principle of separation of church and state clear and unequivocal. The group for which I speak urges for your serious consideration the following three suggestions:

1. That there be no changes in our existing Bill of Rights, or Article I, paragraphs 1 to 21, inclusive, which would in any way weaken those rights.

2. The present school fund provision found in Article IV, Section VII, paragraph 6 of the Constitution, be strengthened by adding the following provision (I realize that that may be considered coming under your Legislative Committee; yet, since it is to tie in with the subject with which I speak, I would like to call it to your attention as it may even come under the Bill of Rights) (*reading*):

"No public moneys or funds collected by taxation in this State by the State, or any subdivision thereof, shall be used either directly or indirectly to aid any school or institution of learning wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught."

A clause somewhat similar was in the New York State Constitution before it was amended, and was used as a basis in the case of *Jude v Board of Education in New York* for preventing use of public funds for the purpose in question. Therefore we believe that such a clause would be held constitutional.

3. That the following provision should be added to or incorporated in the new Constitution (*reading*):

"Appropriation for private purpose [and I might say that this would fall into the category of Article I, paragraphs 19 and 20, of our present Constitution]. No tax shall be levied for appropriation of public money or property made by the State or any subdivision thereof either directly or indirectly except for a public purpose. No public money or property shall be appropriated, applied, donated, or used directly for any sect, church, denomination or sectarian institution."

I think this covers the essential elements of what we've had in the Constitution before and makes clearer what we thought was already in the Constitution regarding the separation of church and state. I might say that this clause was framed partly from the "Model State Constitution," which has probably been testified to herebefore. No matter what your religious convictions, there's one principle with which most of us can agree, and that is the statement of Christ according to St. Matthew, chapter 22, verse 21, which reads: "Render therefore unto Caesar the things which are Caesar's, and unto God the things that are God's." Unless the citizen keeps in separate

spheres his duty to the state and his duty to his church, there's bound to be trouble. History has demonstrated this over and over again.

Furthermore, the evil works both ways. Any citizen, no matter what his faith, should be only too happy that a Constitution provides for this separation, protecting his church from civil control and interference. And because the state is free from interference and domination by any church, every American of any faith, or of no faith, should be grateful and interested in maintaining this principle. It should be made crystal clear that this is not an issue of Protestant *versus* Catholic. It so happened that the New Jersey bus case involved Catholic parochial school children, but there are Quaker, Lutheran, Jewish, and innumerable other schools that are and will be interested in obtaining public money. There are about 256 religious denominations in the United States. Imagine the spectacle of all these groups scrambling for public funds, and necessarily for the political power which holds the purse strings. While the Catholic does seem the one benefiting at present, we should look farther ahead and see the danger of various religious forces becoming enmeshed in politics.

This question cannot be avoided as controversial, or as what is commonly termed the "hot potato." The problem faces this Committee and this Constitutional Convention, and cannot be side-stepped. It is presently a live question in many of the states of the Union. The figures are available as to what the various states have done. In November 1946 the Wisconsin electorate rejected by a comfortable majority a constitutional amendment which would have authorized transportation of parochial school children. The electorate of New Jersey has not had an opportunity to pass on this vital issue. I am persuaded that unless the proposed draft contains clauses close to those suggested, that the majority of the people will not support a new Constitution. The right to the maintenance of the separation of church and state, which the public thought they had in the New Jersey Constitution of 1844, and which has been taken away by legislative and judicial amendment, must be clarified at any cost.

CHAIRMAN: Is that the end of your testimony, Mr. Titzck? . . . Any questions from members of the Committee?

MR. TITZCK: I might say in closing that in speaking for this taxpayers' group I believe that I speak for a number of groups throughout the State which have acted on this problem. I have not endeavored to represent these different groups, but I know by contact with them that they agree in principle with these thoughts and these suggestions which have been incorporated herein. Thank you for your patience; I admire it. You have more than I confess I could

have in hearing various propositions.

CHAIRMAN: At this time I understand Mr. George Milligan wishes to be heard briefly . . .

MR. GEORGE MILLIGAN: Mr. Chairman and members of the Committee:

As the State Commander of the United Spanish War Veterans, Department of New Jersey, I come before this hearing on revision of the Constitution to voice the resolution passed by the delegates at our State Convention held from the 26th to the 28th of June in Asbury Park, endorsing the veteran laws and concurring in the recommendation of the veterans' committee that has been brought before this hearing today. We veterans of the United Spanish War Veterans realize that we are too old for civil service rights, but my organization is right behind the younger veterans' program. I thank you.

CHAIRMAN: Are there any questions? . . . Thank you, Mr. Milligan, for your views. Mr. Edwin K. Large.

MR. EDWIN K. LARGE: Mr. Chairman, ladies and gentlemen of the Committee:

I'm here in opposition to the inclusion in this Constitution of special privileges for any group. I'm a country lawyer; I don't represent any group, though as a veteran I might stand to benefit from the successful application of that group. I'm speaking for myself alone, but I believe that my sentiments are the sentiments of a great many unorganized people. I do not wish to be understood as attacking the motives of any group. They have a right to be heard and to present their case, and many undoubtedly have a lot of merit in their claims.

I'm in favor of making it possible for the Legislature to award special privileges, but I do not think that the Constitution is the place for them. I submit that you should regard your job in drafting this Constitution as though your work were going to last forever. You will provide for changes, but you will draft the instrument in such a way as to make changes unnecessary. Constitutional changes are bound to be cumbersome, serious and expensive events, and your Constitution loses in stature. It becomes just another piece of legislation.

A privilege is a stick to which there are two ends. If you raise one end by giving special privileges to one group, you relatively lower the other. If you insert the special privileges in a constitution, you freeze a relationship between the privileged group and the other groups. This relationship is constantly changing, and special privileges are such that they should be altered as the relationship alters. The Legislature is competent to award and remove special privileges. It can keep these privileges abreast of the changes in the

relationships that the privileges are designed to effect.

A constitution is a governmental framework. As such it should be as simple and as steady as possible. It should contain nothing which is not necessary to that framework. It should direct itself as nearly as possible to unchanging fundamentals. The Constitution of the United States has stood the test of over a century and a half. Though it now has 21 amendments, 10 of these amendments, the Bill of Rights, were adopted at one time, so that it actually has been amended only 12 times in over 150 years. Fifteen pages of ordinary print will contain the Constitution with all its amendments. Eight and one-half pages will contain the Constitution and one more the Bill of Rights. In this space, the draftsmen of the Constitution set up the framework for building the government of the 13 united states, and that framework is as good for the government of the 48 united states with a population of over 130,000,000 as it was for the government of the 13 united states.

The draftsmen also defined the function of the Federal Government and of the state governments and the relations among the states. They accomplished this between May 25 and September 17, relatively the same length of time that you have and during the heat of the summer and at a place about 50 miles from here. They drafted an instrument which has been the best protector of the individual ever devised, and there's not one word for special group privilege in it. The task of this Convention is great, without unnecessary detail. Brevity is in itself an extremely important objective in a Constitution. It will make easier the subsequent interpretation as well as the original drafting of the instrument.

As I said before, I don't think that you can properly freeze changing relationships. But if you could, I don't think that you could properly do it as of the present time. If you do it for some groups, you have to give special privileges in fairness to all groups entitled. This means that all should be adequately represented and heard, but they are not. Some groups are not represented before you at all. Some groups are better represented than others. In the short time that you have, it will not be possible for you to make allowances for this disparity. Since this Constitution is to last indefinitely into the future, whether you provide a 20-year revision clause or not, it's not a fair answer to say that if a group fails to express itself before you, then it can take the consequences of its failure. To my mind, the proper, easiest, and most equitable thing to do is to state the unchanging rights of all persons and leave it to the Legislature in its own time and with adequate consideration to provide such special privileges as the future may require. Thank you very much.

CHAIRMAN: Do any members of the Committee have any questions at this time? Mr. Carey.

MR. CAREY: Have you any objection to a grant being made constitutionally that you protect any pensions or tenures of office, determined to be on a contractual basis with the State?

MR. LARGE: I don't understand your question, Mr. Carey. I do think that the Legislature should be empowered to grant privileges, if that's what you mean. Have I answered your question, sir?

To my mind, these relationships are changing. For example, the relationship of labor to the rest of the population is not the same now that it was 15 years ago. The relationship of the veterans is not the same, if for no other reason than there are so many more of them. If you freeze, for example, tax exemption—take any figure you like at the present rate of inflation—that tax exemption will be worth much less ten years from now than it's worth today. It may go the other way. It seems to me that it's something which should not be frozen in the Constitution.

CHAIRMAN: Are there any other questions at this time? . . . If not, thank you very much, Mr. Large, for your views.

Did Mrs. Thompson give up in discouragement? She was on the list. Mrs. Thompson was on the list to appear, but is not available at this time. I have a few other names that I would like to call. Mr. Charles P. Sullivan, of New Brunswick, representing the American Veterans of World War II.

MR. CHARLES P. SULLIVAN: Mr. Chairman, members of the Committee: I'm here today representing American Veterans of World War II, a national organization composed of the veterans of this past war only, and only from the four combat branches of the services, Marine Corps, Navy, Coast Guard, and the Army. I represent the New Jersey State Department as chairman of their Committee on the Constitution Revision.

After the people of the State of New Jersey signified their desire to have such a Constitution Convention, our organization met in executive session and drew up a resolution of their views and forwarded it to this Convention. A copy was furnished to each delegate elected to the Convention. I have here a brief which elaborates a bit on the resolution we presented and I will read it to you at this time. (*Reading*):

"American Veterans of World War II, Department of New Jersey, wish to express through its Committee on Constitutional Revision in New Jersey, appreciation of an opportunity of presenting its views to the Convention with reference to the inclusion in the proposed revised Constitution of New Jersey of authority to the Legislature to enact laws pertaining to the rights and privileges to be afforded to veterans of wars in which America has engaged. It is our opinion that there is no need for detailed reference in the proposed Constitution to the merit of subjects concerning statutory provision as now exist in this regard. We do feel, however, that general authority in our Constitution should be provided to enable the Legislature to enact such laws as may in their discretion be desirable for the welfare of the veterans, as well as to enlarge the scope of existing

legislation on this subject. We feel that such a constitutional provision is necessary in order to remove all doubt as to the constitutionality of many of the statutory provisions presently on our statute books with reference to veterans. We do not deem it within our problem to suggest a proposed draft of the Article to accomplish the desired objective, since this is a matter within the scope of the duties of the Committee and the Convention itself.

It is noteworthy, in examining into the subject, to find that tax exemption was authorized for veterans of every war in which this glorious Republic participated, dating from the War of 1812, and similar exemptions have been enacted after every other war, including World War II; that the original Civil Service Act of 1908 made provision for certain preferences for veterans; that a bonus was provided for veterans of the war of 1898 and World War I; that special peddling licenses are issued without fee; that special retirement provisions exist with respect to public employees to our veterans; that tenure of office for veterans is directed, except where the term of office is established by law; that veterans' organizations are exempt from local taxation; that no license fees are required of veterans with respect to the many types of licenses, and that disabled veterans after admission to the Bar of the State of New Jersey are entitled to receive from the State, without charge, the law and equity reports and certain other legal publications.

Most of the foregoing privileges and exemptions have been enforced for many years. However, there has always been a feeling that many of them were without constitutional authority and subject to attack. The decision in any one instant, if adverse, would wipe out a privilege to which they are justly entitled by reason of their sacrifices for their State, country and democracy itself. For these reasons, let's hold to the opinion that inasmuch as the Constitution is now being revised, provision should be made therein for the removal of all doubt as to the constitutionality thereof, and general authority—without specific reference to each particular right and privilege—given to the Legislature to enact such laws as in its discretion may be proper for the continuance of the rights and privileges now afforded to such others as may be desired. Thank you very much."

CHAIRMAN: Any questions? . . . Since there are no questions, we thank you very much, Mr. Sullivan, for your views. Is Mr. Joseph Bowser here?

MR. JOSEPH BOWSER: Mr. Chairman, ladies and gentlemen: I am director of the Urban Colored Population Commission, State of New Jersey. I've been ordered to expedite time and I present Mr. A. LeRoy Jordon, who is our advisor.

MR. A. LE ROY JORDON: I am, Mr. Chairman, a member of the committee on behalf of the urban colored population. We want to endorse section 5-A of the Joint Committee for Constitutional Bill of Rights. I presume you are familiar with that section. It has been discussed a number of times.

We feel that this section will give to the Negroes rights and privileges in the State which they so richly deserve and which they do not altogether enjoy at the present time. You'll recall that a few years ago the State Legislature passed a civil rights bill. We went to Salem, New Jersey, expecting to enjoy the civil rights, and all the restaurant owners closed the restaurants. Go into a restaurant now and you'll find that all the tables are reserved. You cannot enjoy rights and privileges in owning and acquiring property.

I would just like to read briefly the decision of Judge Silverman in a restriction case which will show you how important, how necessary it is, that this section should be adopted:

"In New Jersey the Legislature has clearly evidenced and forceably declared our public policy regarding the elimination of discriminatory practices on many and various subjects. At the last session it enacted a series of laws designed to effectuate that policy as respects civil rights and jury service, fair employment practices, public works, schools, hospitals, and employment in defense industries. But it has not yet declared that restrictive covenants on occupancy of private property should be forbidden or eliminated as one of the evils requiring remedy. It may be that the elimination of all discriminatory practices against all races and all peoples is a goal which some day may yet be attained in a democracy like ours, but until the Legislature, the supreme law-making power, acts in the matter, it is not within the power or competence of the courts to do so.

It has long been held and supported by the weight of authority that restrictions upon the use of property imposed by agreement of the owner or assumed by covenant in a deed, which excluded a particular race or social group, are not violative of the constitutional provision against discrimination or equal protection of the law, for the reason that such constitutional prohibitions are intended as protection against arbitrary action by the Legislature and not as affecting the actions of private parties."

Of course, you can see, gentlemen, that is necessary, if we are to enjoy these rights, that something concerning them must be put into the Constitution. You know how we lost the Civil Rights Case. Shortly after the Civil War, the Supreme Court of the United States held that there were limitations upon the Federal Government and not upon the states. Now, we have Judge Silverman coming along in New Jersey saying that all these fine things that are in our Constitution are limitations upon the arbitrary actions of the Legislature and not upon private parties. So, unless you put something into the Constitution that will protect our rights, you will be in the same position that you were before the Constitution was adopted. I need not add how much such a statement of rights would hinder the advance of Communism in this country, and I think this State would be taking the lead in declaring that Communism has no place in New Jersey and that we can make democracy work.

CHAIRMAN: Are there questions for the witness? . . . Thank you very much, Mr. Jordon.

At this time I would tell the Committee that Mr. A. C. Brady, Superintendent of the New Brunswick District, representing the New Jersey Conference of the Methodist Church, had a brief which he wished to have submitted to the proper Committee of the Constitutional Convention. I'll just take a moment to note that as I advised Mr. Brady, I would do that. This brief sums up as follows: We ask you to outlaw (1) all forms of gambling in our State; (2) all licensed traffic in intoxicating liquor; (3) all forces that encroach on the observation of the Christian Sabbath as a day of worship and rest to our citizens; (4) all interests that tempt our people to live

on a level lower than the best possible for them.

I told Mr. Brady that his brief would be delivered to the President of the Convention, for distribution to the proper Committee. He thought that that would expedite matters and make it possible for his material to reach the attention of those who are to consider such matters.

We have one more witness. At this time I'd like to ask Reverend Frank Stanger if he'd care to take the chair. He very nicely said that he felt our time had been pretty well taken up, but if he would care to be heard and review especially the three points in his brief, I'm sure the Committee would be pleased to hear him.

REVEREND FRANK STANGER: Mr. Chairman, and members of the Committee:

I speak to you first of all as a lifelong citizen of the State of New Jersey. It is the State that has always been home to me. It is the welfare of this State that I've always been interested, and it is with the future material well-being and the moral and spiritual prosperity of this State that I am profoundly concerned. I speak to you also as the representative of several Christian groups. I speak for the Camden County Ministerial Association, which includes the ministers of most of the Protestant churches of Camden County; for the Provisional Council of Churches of Greater Camden Camden, which is also a Protestant inter-denominational group of ministers and layman; for the Camden Methodist Missionary Society, which is responsible for the development of all the Methodist work within the City of Camden and vicinity; for the Methodist Summer Assembly, an incorporated institution which for the past 16 years has been training large numbers of youth for respectful and useful Christianship; and for the Sunday League, Inc., a statewide inter-denominational group interested in public morals. I'd like to just list the recommendations, because you will have copies of the brief:

1. We recommend the absolute separation of church and state in all matters relating to the public education of children and youth.
2. We recommend that paragraph 4 of Article I of the Constitution of New Jersey be enlarged to include: "No person shall be denied the enjoyment of any civil rights merely on account of his religion principles, or his racial differences."
3. We oppose legalized gambling in any form within the State of New Jersey. We oppose the establishment of lotteries, buying and selling of lottery tickets, pari-mutuel betting, book-selling, book-making, bingo, games of chance or gambling of any kind.

Thank you, Mr. Chairman.

CHAIRMAN: Are there any questions at this time? . . . Thank you Rev. Stanger, for your views.

At this time I would like to ask if there are any other citizens in

the room who would like to be heard? I believe, then, that that closes our public hearing on Article I, the Bill of Rights. As you know, we received other material today from people who are interested in other subject matters within our jurisdiction.

COMMITTEE MEMBER: I move that we adjourn until Tuesday, following the formal session of the Convention.

CHAIRMAN: Anyone second it?

COMMITTEE MEMBER: I second it.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed?

(Silence)

(The session adjourned at 5:00 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 15, 1947¹

(Morning session)

(The session began at 11:00 A.M.)

The seventh meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Stanger, Schenk and Taylor.

Chairman John F. Schenk presided.

The Chairman asked the committee members for any changes in the record of the fourth committee meeting. There were no proposed changes; therefore, the minutes were approved as a matter of record.

Mr. Park suggested that in order to expedite matters, the Committee consider the subject matters which are not too controversial and find the results on them, and suggested that the first item to be taken up for consideration and final draft be Article VIII.

Mr. Taylor suggested that the Committee have a public hearing on the tentative draft; after extensive discussion, it was unanimously agreed that this problem be deferred until the draft is completed.

Mr. Park moved that paragraph 1 of Article VIII of the 1844 Constitution be excluded from the final draft, as it was in the 1944 proposed Constitution. The motion was seconded by Mr. Stanger and the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Stanger, Schenk, Taylor—11

NAYS: None—0

Mr. Park then moved that Article VIII, paragraph 1, in the final draft, read as Article VIII, paragraph 2, now reads. The motion was seconded and the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—11.

NAYS: None—0

¹ These minutes were prepared by the Secretary of the Committee.

The Chairman delivered a message to the Committee for their consideration to the effect that Mr. Van Alstyne had informed him that the Executive Committee was eliminating, in its recommendations, all references to Secretary of State as a constitutional officer.

Discussion followed regarding this message and the Chairman stated that it would fall into the category of deferred business.

Mr. Stanger moved that paragraph 3 of Article VIII be divided into two sections as follows:

"2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: 'The State of New Jersey, to Greeting.'

3. All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz: 'against the peace of this State, the government and dignity of the same.'"

The motion was seconded, and the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—11.

NAYS: None—0

Mr. Stanger moved that a paragraph to be known as paragraph 4 be included, in the words of the present paragraph 4 of Article VIII, except that the date be omitted until the final draft is made. The motion was seconded by Mr. Carey and the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—11.

NAYS: None—0

The Chairman stated that that completed the material in the 1844 Constitution and asked for any other suggestions for tentative proposals on Article VIII. There being none, the Chairman then proceeded to Article III, Distribution of Powers of Government.

Mr. Park referred to Article II of the 1944 proposed Constitution and made a motion that the words "functions and responsibilities" be inserted after the word "powers."

After extended discussion, it was agreed that the words "functions and responsibilities" should be omitted, and Mr. Park therefore withdrew his motion.

Mr. Ferry then made a motion that the Committee follow the draft of the 1944 proposed Constitution. Mr. Park seconded the motion, and the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—11.

NAYS: None—0

The Chairman stated that there was now open for discussion the matter of Article II, Elections and Suffrage.

Mr. Park moved that the first clause of paragraph 1 of the 1844

Constitution read the same with the exception that the word "male" be omitted. Mr. Stanger seconded the motion.

The Chairman read a letter from Mr. Douglas McNeal, of the Department of Institutions and Agencies, citing his views on the subject of the voting age.

Mr. Ferry suggested as an amendment to Mr. Park's motion that the following words be added to the first clause: "and upon all questions which may be submitted to a vote of the people." The motion was seconded by Mr. Stanger and the following vote recorded:

AYES: Carey, Delaney, Ferry, Katzenbach, Glass, Park, Pursel, Randolph, Schenk, Stanger—10

NAYS: Taylor—1

Mr. Taylor stated that he would prefer to have the voting age reduced to 18 years.

Mr. Park made a motion to delete the second clause of paragraph 1 from "provided" to "this State." The motion was seconded by Mr. Ferry and the following vote recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—11

NAYS: None—0

Mr. Park moved that the third clause of paragraph 1, Article II, in the final draft read as follows (*reading*):

"no idiot or insane person shall enjoy the rights of an elector."

The motion was seconded by Mr. Pursel and the following vote recorded:

AYES: Carey, Delaney, Ferry, Glass, Park, Pursel, Randolph, Schenk, Stanger, Taylor—10

NOT VOTING: Katzenbach—1

A motion was made by Mr. Park that clauses 4 and 5, paragraph 1, Article II read the same as in the 1844 Constitution. Mr. Pursel amended the motion and suggested that in clause 4, paragraph 1, Article II, the words "of his vote" should be changed to "of a vote." Mr. Delaney then suggested that the words "of his vote by reason of his absence from such election district," be changed to read as follows: "of a vote by reason of absence from his election district."

The meeting adjourned with the statement by the Chairman that the matter would be discussed further at the afternoon session.

(The session adjourned for luncheon at 1:05 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 15, 1947¹

(Afternoon session)

(The session began at 2:30 P. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Stanger, Schenk and Taylor.

Chairman John F. Schenk presided.

Mr. Stanger made a motion that clauses 4 and 5, paragraph 1, Article II, be brought up again for entire reconsideration. The motion was seconded by Mr. Ferry and carried unanimously.

Mr. Ferry then read paragraph 7 of Article VIII of the 1944 proposed Constitution for the Committee's discussion and inquired as to whether they all agreed to leave in "only in time of war."

After extended discussion, Mr. Ferry made a motion that the clause read the same as paragraph 7, Article VIII of the 1944 proposed Constitution. Mr. Taylor seconded the motion. Mr. Delaney then suggested that the word "his" be changed to "his or her."

Mrs. Katzenbach stated that upon inquiry she was informed that the word "his" is meant to read "his or her."

The Chairman requested a vote on Mr. Ferry's motion, which was seconded, and, on a show of hands, the following vote was recorded:

AYES: Delaney, Ferry, Randolph, Schenk, Taylor—5

NAYS: Carey, Glass, Katzenbach, Park, Stanger—5

NOT VOTING: Purcell.

The motion was, therefore, declared lost.

Mr. Pursel moved it be reserved for further discussion. The motion was seconded by Mr. Delaney. After a lengthy discussion, it was decided to continue on this subject and arrive at a decision.

Mr. Park again moved that the final draft [of clause 4] read the same as in the 1844 Constitution. Mrs. Katzenbach amended Mr. Park's motion and moved that the words "army or navy" be replaced by the words "armed forces," as suggested by the Chairman. Mr. Pursel seconded the motion.

The Chairman then suggested to the Committee that a vote be taken as to whether the words "in time of war only" should be included. After being moved and seconded, on roll call the following

¹ These minutes were prepared by the Secretary of the Committee.

vote was recorded:

AYES: Katzenbach, Park, Pursel—3

NAYS: Carey, Delaney, Ferry, Glass, Randolph, Schenk, Stanger, Taylor—8

Mr. Stanger made a motion that the right of absentee voting for those in the armed forces be granted absolutely in time of war, and that it be submitted to the Legislature in time of peace. The motion was seconded by Mr. Glass and the following vote recorded:

AYES: Glass, Stanger, Taylor—3

NAYS: Carey, Delaney, Ferry, Katzenbach, Park, Pursel, Randolph, Schenk—8

A motion was made by Mr. Park that clause 4, paragraph 1, Article II be brought up for consideration at a later date. Mrs. Katzenbach seconded the motion. Carried.

Mr. Randolph made a motion that the subject of absentee voting of civil officers also be considered at a later date, which motion was seconded and carried.

The Chairman then called the Committee's attention to clause 5, paragraph 1, Article II.

Mr. Ferry made a motion that clause 5, paragraph 1, Article II in the final draft read the same as in the 1844 Constitution. The motion was seconded by Mr. Stanger and unanimously adopted.

Mr. Park then made a motion that paragraph 2, Article II, in the final draft read the same as set forth in the 1844 Constitution, with the exception that the last word "bribery" be changed to "crime." The motion was seconded by Mrs. Katzenbach.

After considerable discussion, Mr. Pursel moved to amend Mr. Park's motion, that the language of the final draft be the same but that the word "bribery" should be deleted and there should be added the following words: "such crimes as may be designated by the Legislature."

Mr. Park stated that he accepted Mr. Pursel's suggestion as an amendment to his motion, and the same was seconded by Mr. Stanger. On roll call the motion was unanimously carried.

Mr. Stanger then made a motion that the following words be added to Mr. Pursel's motion: "provided, any person convicted of any such crime, who may be pardoned or otherwise restored by law to the right of suffrage, shall enjoy the right of an elector." Mr. Ferry seconded the motion. The Chairman called for a tentative vote on the motion, which was recorded as follows:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Randolph, Schenk, Stanger, Taylor—10

NAYS: Pursel—1

On motion made, seconded and carried, the meeting adjourned to Wednesday, July 16, 1947 at 10:00 A. M.

(The session adjourned at 4:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 16, 1947¹

(Morning session)

(The session began at 10:00 A. M.)

The eighth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman informed the Committee that the State Treasurer, Mr. Robert C. Hendrickson, previously invited by the Committee to appear, had expressed the desire to appear before the Committee and submit a brief. The Committee agreed unanimously that they would be pleased to hear Mr. Hendrickson's views.

Mr. Pursel read several statements regarding the meaning of the word "pardon." Discussion followed, and Mr. Ferry stated that he was of the opinion that although a person had been pardoned for an offense, he still had a record of crime.

The Chairman called the Committee's attention to the Preamble and to Article I, and asked for suggestions.

Mr. Stanger moved that the Preamble be continued as it now reads in the present Constitution. The motion was seconded by Mr. Ferry and a unanimous vote was recorded.

Mr. Stanger made a motion that paragraph 1, Article I, be adopted the same as it reads in the 1844 Constitution, but the word "men" be changed to "persons." Mrs. Katzenbach seconded the motion.

Mr. Park advocated that in law "persons" is construed to mean "men and women," but asked if it would also include corporations. After lengthy discussion, a vote was called on Mr. Stanger's motion, which was adopted by a unanimous vote.

The Chairman then asked Mrs. Jane Barus, Secretary of the Executive Committee, if she wished to be heard. Mrs. Barus said, in brief:

¹ These minutes were prepared by the Secretary of the Committee.

"We had a meeting with Governor Driscoll to receive ideas about necessary improvements in the Executive Department. It was agreed that one of the great faults of the present Constitution is that the Governor has no executive power at all, and the number of departments and commissions in his section of the Government is so vast that, as Governor Driscoll said, there is no room in the State House where they could gather for a meeting. He advocated making the Governor a true executive, with alert assistants, appointed by him and responsible to him. In order to make that possible, we voted to include a provision that the major departments should not be more than 20. It would simply mean that the other departments would be coordinated, but that all the department heads would report back to the Governor. In order to do that, however—as to whether the Governor should have the power to allocate the functions, or it be done by law—we agreed it should be allocated by law.

We also have been told that the best thing the Committee could do would be to eliminate, as far as possible, the naming of any specific officer in the Constitution; to leave that to the Legislature, because there is no way of removing them after they are in the Constitution, except by impeachment. With that in mind we voted to remove from the Constitution various officers. In the old Constitution, Page 28, paragraph 3, we voted to eliminate naming in the Constitution, the Attorney-General and the Clerk of the Supreme Court. We took this action because that would come under Judiciary. The Secretary of State, the Attorney-General, and Keeper of the State Prison, were eliminated from this Article. Our thinking was, not to eliminate those jobs, but that they would continue to function under the state law setting up the department. It seems more in conformity with the advices that we have, not to leave those embodied in the Constitution and, therefore, we simply would have the Constitution silent on them and allow all that to be set up by the Legislature."

The Chairman inquired of Mrs. Barus if she thought the Executive Committee would make a later change. Mrs. Barus said:

"My suggestion would be that you take this up with the Chairman, to come before a meeting of the Committee—if you wish to change this. This passed unanimously, with very little discussion. It was decided that prosecutors of the pleas would be included, the others would be left to the Legislature or the Judicial Section."

The Chairman stated that it had been requested that a few days be given in which to submit briefs on why it might be worthwhile that the Secretary of State be retained as a constitutional officer. The Chairman further stated that the Committee had decided to leave the matter open for a time until the information was received and, as soon as it was received, the Committee would deliver a copy of its views to the Executive Committee.

Mr. Carey inquired of Mrs. Barus if the Executive Committee had finally voted on the elimination of the Attorney-General from the Constitution. Mrs. Barus replied that there was nothing final in the minds of the Executive Committee and it was strictly tentative.

Mr. Carey was of the opinion that the Secretary of State and the Attorney-General are entirely different from the other departments of the State Government, and that the Attorney-General has functions which establish him as an outstanding officer. Mr. Carey further stated he thought it would lead to an amendment that would require the election of the Attorney-General and Secretary of State by a vote of the people.

Mrs. Barus stated that the only thing she could say was that the Executive Committee acted on the best advice of the people who came before the Committee.

There being no further questions for discussion, the Committee formally thanked Mrs. Barus for her analysis of the situation.

The Chairman then inquired of the other two ladies present, if they desired to speak. One of the ladies, Mrs. Geraldine S. Thompson, stated that she was only sitting in, as she wanted people to be impressed by the quality of the meeting. Mr. Carey then inquired of Mrs. Thompson if she could make a suggestion as to the exact wording of any provision, if one is put in the Constitution, under the Bill of Rights, giving women all the rights they should have.

Mrs. Thompson suggested that the Committee propose the question to Mrs. Barus who, in Mrs. Thompson's estimation, would be more familiar with the situation, but she thought that all groups, including the ladies, want to be recognized so as not to be deprived of anything they want, and then they want special privileges as well, so they want both.

The Chairman then read a suggested paragraph he had compiled from various suggestions made in the Committee relating to the rights and privileges of women.

At this time, the Committee thanked Mrs. Thompson for her views and she was excused.

Mr. Park made a motion that the Committee proceed to consider Article I, paragraph 2. The motion was seconded by Mr. Pursel and, on vote, was unanimously adopted.

Mr. Park moved that paragraph 2, Article I, Rights and Privileges, read the same in the final draft as the 1844 Constitution now reads. Mr. Delaney seconded the motion and a unanimous vote was recorded.

Mr. Park made a motion that paragraph 3, Article I, be incorporated in the final draft, identical with the 1844 Constitution. The motion was seconded by Mrs. Katzenbach.

At this point, Mr. Stanger brought to the Committee's attention Professor Heckel's suggestion that the word "privilege" be changed to "right."

On roll call, Mr. Park's motion was unanimously adopted.

Mr. Park moved that paragraph 4, Article I, be deferred for consideration at a later date. Mr. Stanger seconded the motion and a unanimous vote was recorded.

Mr. Park moved that paragraph 5, Article I, in the final draft read the same as in the 1844 Constitution. The motion was seconded by Mr. Delaney.

At this time the Chairman asked that Mr. Randolph submit his proposal for discussion by the Committee. The Chairman then read

the proposal submitted by Mr. Randolph and discussion followed.

Mr. Stanger moved that the matter be laid on the table, deferring it to a later date, so that a copy of Mr. Randolph's proposal could be submitted to each member of the Committee for study and decision. Mr. Park seconded the motion and a unanimous vote was recorded.

Mr. Park made a motion that paragraph 6, Article I, in the final draft read the same as the 1844 Constitution now reads. The motion was seconded by Mr. Stanger. Mr. Randolph stated that he was in favor of the wording of the Federal Constitution, after which a lengthy discussion followed.

Mr. Park moved that the matter be laid on the table for further discussion at a later date. The motion was seconded by Mr. Randolph and adopted by a unanimous vote.

Mr. Park moved that paragraph 7, Article I, be deferred for consideration at a later date. Mr. Pursel seconded the motion and a unanimous vote was recorded.

Mr. Park moved that paragraph 8, Article I, in the final draft read the same as the 1844 Constitution now reads. Mr. Stanger seconded the motion.

Mrs. Katzenbach suggested that the following sentence be added to paragraph 8, Article I: "nor shall witnesses be unreasonably detained." Mr. Park accepted Mrs. Katzenbach's suggestion as an amendment to his motion. Mr. Pursel seconded Mrs. Katzenbach's amendment.

After lengthy discussion, Mrs. Katzenbach moved that the matter of paragraph 8, Article I, be laid on the table for the present time. Mr. Park seconded the motion and a unanimous vote was recorded.

At this time, Mr. Robert C. Hendrickson, the State Treasurer, came in, and Mr. Park moved that the Committee hear Mr. Hendrickson's proposals. The motion was seconded and duly adopted. The Chairman then called on Mr. Hendrickson to present his views.¹

Mr. Hendrickson said he was very grateful for the privilege of coming before the Committee at this late date. He further stated that he wanted the Committee to feel free, throughout the reading, to question him whenever they chose.

Mr. Hendrickson then proceeded. A copy of his brief was presented to the Chairman, for copies to be made and distributed to each member of the Committee.

After reading the brief, Mr. Hendrickson called the Committee's attention to section 3 of his brief, page 4. He further stated that this section was left out of the 1844 Constitution and should be included. Mr. Hendrickson quoted section 3 as follows:

"I would add to paragraph 3 a provision which was rejected as an

¹ Mr. Hendrickson's remarks appear at length in the Appendix to these Committee Proceedings.

amendment in the 1844 Convention, namely, 'but liberty of conscience is not to be construed to excuse acts of licentiousness, or justify acts inconsistent with the peace and liberty of the State.' "

Mr. Hendrickson further stated that he would add a provision to direct the citizen's attention to his full responsibility for citizenship, and in these times of ideological attacks on our form of government, it would stand as a warning to those who seek to destroy our rights as free men.

Mr. Park inquired of Mr. Hendrickson what his thoughts were regarding "trial by jury" on lunacy matters, and also the question of the desirability of allowing the Legislature to see if we really need a jury in such cases.

Mr. Hendrickson replied that some of these things had been discussed in 1941 and 1942 and it was felt it might be dangerous to change laws on the jury situation. It was felt that it would create distrust throughout the State. Mr. Hendrickson further stated that perhaps a formula could be worked out by which this specific matter could be treated without changing the paragraph on juries.

The Chairman then stated that he had asked the same question of Dean Sommer and others on the Judiciary Committee and they were of the opinion that it will cause trouble if changes are made on this point.

Discussion followed among the committee members regarding Mr. Park's question.

Discussion then ensued regarding collective bargaining and Mr. Hendrickson's suggestion for a paragraph that the right of labor to bargain collectively not be impaired.

Mr. Hendrickson suggested that perhaps a new paragraph would treat it best.

Mr. Pursel then brought up the subject of labor in the Bill of Rights.

Mr. Carey inquired of Mr. Hendrickson as to how much he thought the labor problem would be extended if given a place in the Constitution. Mr. Hendrickson replied that he thought it a problem different from banking or law. He thought it was a social problem.

Mr. Carey then asked a question relative to a public employee's right to strike. Mr. Hendrickson replied that he did not feel public employees had a right to strike. He further suggested that if the Committee felt they should write in such a clause as he recommends, the Committee limit it so that public employees cannot strike, by adding the necessary language.

Mr. Hendrickson further stated that with reference to collective bargaining and the public employee, public employees do bargain, in a sense.

Mr. Carey inquired of Mr. Hendrickson whether, if the Commit-

tee did adopt his proposal, he thought it should be coupled with a proviso that under no circumstances should public employees strike against public employers. Mr. Hendrickson replied that it should not be construed to authorize public employees to organize against the Government.

The Chairman then read a paragraph regarding collective bargaining compiled by him to show the problems facing the Committee, embodying some of Mr. Hendrickson's proposal and attempting to cover the point of concern to Mr. Carey. The Chairman further suggested that the matter of collective bargaining be deferred until a later date.

Mr. Hendrickson then stated that he would be very glad to present a brief to the Committee on the subject.

Discussion followed between Mr. Hendrickson and various committee members, relative to amending the Constitution every three years or five years on the same subject, and the question as to what percentage of vote should be required for the passage of amendments in the Legislature.

Mr. Hendrickson then stated, in brief:

"On the subject of your proposals whether there should be a two-thirds or three-fifths passage by the Legislature with the Governor's approval, instead of just a bare majority, I haven't too much feeling on that. I am a little determined, from my experience in the Legislature, that we not just limit the action to a majority of the Legislature without the Governor's approval. If the Committee on the Executive gives the Governor stronger veto power, it seems to me you have to recognize it. You can't consider the Governor, under our system of government, as a part of our Legislature; if you bring him into the picture as one of the people to pass on the amendments you make him a part of the Legislature. Our scheme of government recognizes the Legislature as the representative of the people and, as such, closer to the people than the Executive. I won't argue the point on the question of what percentage or what fraction we should use, but put enough restriction in there, either three-fifths or two-thirds."

Mr. Glass then stated that the Committee had tentatively agreed that if the Legislature originated the amendment by a three-fifths vote, and the Governor vetoes it, then it would require a two-thirds vote to pass over the Governor's veto. Mr. Glass further stated that the Committee had since heard conflicting views on the matter.

A discussion followed on Mr. Hendrickson's condemnation of the proposed 20-year automatic convention vote as discussed in his brief, with Mr. Hendrickson pointing out the dangers of it.

Mr. Hendrickson said:

"I want to leave this thought with you. It doesn't directly bear on your problem, but for some unknown reason there has grown up in the State the feeling—let me speak for the small counties—that small county Senators are obstructionists. I disagree. As an example, take the North Jersey relief problem in the depression of the '30s. If it hadn't been for the courage of some of the South Jersey Senators, we would still have been in the Legislature looking for money for the merchants to pay the relief bill. Bergen County was bitterly opposed to a bond issue. A lot of the Senators said we couldn't have any new taxes. I was particularly willing to go

along, because these people had to be paid. North Jersey Senators said we could do it with economy, but we could have probably exacted economies up to a million dollars only so we bonded for \$21,000,000. We borrowed \$21,000,000 at a very low interest rate and met our bills. Those bonds today are paid off. It avoided a new tax program. It avoided the levy of new taxes which once enacted are very hard to repeal, and so saved the taxpayers of this State millions and millions of dollars. The small county Senators made this possible, and yet people will say of small county Senators that they are selfish. I recognize how easy it would have been for me to say back home, 'I can't figure out how they spend so much money on relief in the big counties.' But I did not, although my county had practically no relief problem.

Don't fall for the old cry that we have in our small counties Senators who are below par. Compare the record of Senators of this State—all of them over a period of the last 25 years. You'll find, like your Governors, a great many good ones came from small counties, and you'll find that in the larger counties they are sometimes represented by Senators of inferior quality, because the bosses in large counties are afraid to send a man down there whom they can't control. These things balance themselves out. You've got to take a chance in life; you can't hide behind a wall and say you are safe. I want to say one thing more—that I have found that there are always a few unworthy public servants, but by and large, most of the people in public life want to do a good job, regardless of where they come from."

Mr. Hendrickson stated that with the protective restrictions against a too easy amending clause, you do not prevent the orderly liberalization of a Constitution, but you do protect the people against hasty actions that may be harmful later.

In conclusion, Mr. Hendrickson quoted excerpts of the last paragraph of his submitted brief, and thanked the Committee for the privilege of being heard.

There being no further questions for discussion, the Committee formally thanked Mr. Hendrickson for his suggestions.

On motion made, seconded and carried, the Committee recessed until 2:00 P. M.

(The session adjourned for luncheon at 12:45 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 16, 1947¹

(Afternoon session)

(The session began at 2:00 P. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman announced that the Committee would at this time proceed with Article I, Rights and Privileges, paragraph 8, which had previously been laid on the table for future discussion.

Mr. Park moved that paragraph 8, Article I, of the new draft read the same as it now reads in the 1844 Constitution. Mr. Randolph stated that this move was out of order, as it was only deferred. Mr. Park agreed that Mr. Randolph was correct. The motion was, therefore, declared out of order by the Chairman.

Mr. Stanger suggested the word "unjustly" be substituted for the word "unreasonably." Mr. Park stated that he did not think the question was "unjustly," but just "unreasonably."

Mr. Park made a motion that paragraph 8, Article I, of the final draft, read the same as it now reads in the 1844 Constitution. Mr. Pursel seconded the motion.

Mrs. Katzenbach amended Mr. Park's motion, by moving that the following words be added to paragraph 8: "nor shall witnesses be unreasonably detained." Mr. Park seconded the motion. After lengthy discussion, Mrs. Katzenbach withdrew her motion.

Mr. Randolph suggested the following words be added at the end of paragraph 8: "and in preparation of his defense."

After discussion, Mr. Carey suggested the Committee send Mr. Randolph's suggestion to the Governor to be presented to the Legislature.

At this time, Mr. Park called for a question on his motion that paragraph 8, Article I, remain as it now reads in the 1844 Constitution. On roll call, the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Schenk, Stanger, Taylor—9

¹ These minutes were prepared by the Secretary of the Committee.

NAYS: Pursel, Randolph—2

Mr. Carey made a motion to amend Mr. Randolph's motion to read, "in the preparation and conduct of his defense." Mr. Randolph seconded the motion. On roll call, the following vote was recorded:

AYES: Carey, Randolph—2

NAYS: Delaney, Ferry, Glass, Katzenbach, Park, Schenk, Stanger, Pursel, Taylor—9

Mr. Park moved that paragraph 9, Article I, read as follows in the final draft:

"No person shall be held to answer for a capital or otherwise infamous offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger."

Mr. Pursel seconded the motion. After extended discussion, Mr. Carey moved that the question be deferred for consideration at a later time. Mr. Park seconded the motion. Mr. Stanger objected to deferring this matter, and called for a roll call. On roll call, a unanimous vote was had to lay the matter on the table for future discussion.

Mr. Park made a motion that paragraph 10, Article I, in the final draft read the same as it now reads in the 1844 Constitution. Mr. Ferry seconded the motion and, on roll call, a unanimous vote was recorded.

Mr. Park moved that paragraph 11, Article I, in the final draft be identical with the language of the 1844 Constitution. Mr. Delaney seconded the motion.

Mr. Stanger made an amendment to Mr. Park's motion, that paragraph 11 be changed to read as follows:

"The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion when the public safety may require its suspension."

Mr. Glass seconded the motion. After lengthy discussion, Mr. Stanger withdrew his amending motion and Mr. Glass withdrew his second.

On roll call, Mr. Park's motion that paragraph 11, Article I, in the final draft remain the same as in the 1844 Constitution, was adopted by a unanimous vote.

Mr. Park made a motion that paragraph 12, Article I, in the final draft be identical with the 1844 Constitution. Mr. Carey seconded the motion and, on roll call, a unanimous vote was recorded.

Mr. Park moved that paragraphs 13, 14 and 15, Article I, in the final draft read the same as they now read in the 1844 Constitution. Mr. Ferry seconded the motion.

The Chairman read the Proposal introduced by Percy Camp, delegate from Ocean County, regarding the restriction of persons attempting to overthrow the government by force.¹

¹ This Proposal appears in Volume II of these Proceedings.

Mr. Stanger called for question on the motion as made by Mr. Park and, on roll call, a unanimous vote was recorded that paragraphs 13, 14 and 15, Article I, in the final draft read the same as they now read in the 1844 Constitution.

The Chairman, at this time, called for suggestions on paragraph 16, Article I.

Mr. Park suggested that Article III, Section VII, paragraph 7, of the Hendrickson report be consolidated with paragraph 16, Article I, in the final draft.

Mr. Pursel moved that paragraph 16, Article I, read the same as it reads in the 1942 proposed Constitution, under paragraph 16, Article I. Mr. Park seconded the motion.

Mr. Ferry was of the opinion that this statement would mean that a small group in a township or county would have the power to take a person's property away from him.

After extended discussion, the Chairman called for a vote and the following vote was recorded:

AYES: Carey, Park, Pursel, Taylor—4

NAYS: Delaney, Ferry, Glass, Katzenbach, Randolph, Schenk, Stanger—7

The motion was, therefore, declared lost.

Mr. Stanger moved that paragraph 16, Article I, in the final draft read the same as it now reads in the 1844 Constitution. Mr. Glass seconded the motion.

Mr. Randolph suggested that paragraph 16, Article I, be revamped to the satisfaction of the Committee, to be discussed at a later date.

Mr. Park moved that the matter be laid on the table and a unanimous second and agreement was reached.

Mr. Park moved that paragraphs 17 and 18, Article I, in the final draft read the same as the 1844 Constitution. Mr. Stanger seconded the motion and, on roll call, a unanimous vote was recorded.

The Chairman stated that, as the Committee all knew, paragraphs 19 and 20, Article I, were taken away from the Committee.

Mr. Park moved that paragraph 21, Article I, be included in the new draft as the last provision. Mr. Delaney seconded the motion and on roll call a unanimous vote was recorded.

Mr. Carey suggested, at this time, that a new paragraph for Article I be drawn up pertaining to women's rights. The Chairman stated that that came under "new business" and it would be discussed by the Committee at the time when all the Committee's new business is brought up for consideration.

On motion made, seconded and carried, the meeting adjourned to Tuesday, July 22, 1947, at 11:00 A. M.

(The session adjourned at 4:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 22, 1947¹

(Morning session)

(The session began at 11:00 A. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The ninth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

The minutes of the fifth meeting, morning session, were approved as submitted.

The Chairman announced that Mr. Winston Paul, Mrs. Myra Hacker, and Mr. Frank G. Schlosser desired to be heard.

Mr. Paul stated:

"Mr. Chairman, ladies and gentlemen: I want to discuss the amending process and the 20-year periodic referendum. I have one or two thoughts of adjustment or possible compromise which might be helpful to you.

I shall discuss the amending process first. I want to quote from a statement that Mr. Randolph made at the 1844 Convention: 'The only way we can meet objections which can be made to our Constitution is to see that we have made a Constitution by compromise and concession and we have left you an easy and fair way of amending it.'

The great desirability in a Constitution is a reasonable degree of flexibility. I would like to quote Mr. Hendrickson: 'Since the people are ultimate sanction over the change in fundamental law, the procedure which proceeds their action should be made as simple as possible.'

I would also like to read excerpts of Mr. Eli Chiney's conclusions from the Proceedings before the New Jersey Joint Legislative Committee in 1942:

'The proposed two-thirds requirement seems to have little justification other than the Commission's desire to prevent "thoughtless submission" of amendments. The evidence would seem to indicate that the number of votes cast has little to do with the earnestness and thoroughness with which amendments are considered by the Legislature.

'It seems unfortunate that the Commission committed itself to a proposal with such an insubstantial basis in fact. Surrounding the amending process with certain procedural safeguards, such as compulsory public hearings, could probably achieve the desire thoughtful consideration without sacrificing constitutional flexibility.

'The two-thirds requirement is the only procedural safeguard, against thoughtless submission of amendments, suggested by the Commission. Two-

¹ These minutes were prepared by the Secretary of the Committee.

thirds approval, however, provides no guarantee that "thoughtless submission" will be prevented. The establishment of more effective procedural safeguard would not only prevent possible *rigor mortis* of the amending process but would more successfully achieve the goals aimed at with the two-thirds requirement.

I have a further suggestion to offer. A simple majority means 31 votes in the Assembly; three-fifths means 36 votes. Why not make it 34 votes? In the Senate, 11 is a simple majority; 13 would be 60%. Why not make that 12?

The second suggestion is that you might make it of those present and voting. One of the problems is the absentees. Twenty days is ample public notice before it is originated. If you made a provision of those present and voting, that might help.

Now, may I turn to the 20-year periodic referendum. This proposal is important not only on its own merit but also because of the importance that is attached to it by many civic, labor, business and women's organizations which have advocated its adoption. Some have felt that if we adopted a simpler method of amendment there would be little need for future revision. I think they overlook the essential distinction between a single amendment and the function of revision. An amendment is for the purpose of the correction of wording or error, which are almost inevitable in any man-made document. An amendment is to fulfill, to complete, to make effective the intent of the document, implement the obvious purpose of its provisions. An amendment permits a change in some one specific matter. To make the distinction clearer, let me cite the analogy of a home. Often we may need an alteration, but occasionally the limitations of our home require its redesign. Amendments are a patchwork job; revision is necessitated when rebuilding or redesign is required. An amendment, in contrast to an act of the Legislature, is required when an extension or change of power in the Executive, Legislative or Judicial Branches of the government are of such a nature as to go beyond the power of the Legislature and to require the authority of the people. Revision affords a periodic opportunity for re-examination of the basic powers of government and their division between the three branches. A constitution is the people's expression and definition of their form of government.

This subject of future revision is of such primary importance that our new Constitution cannot be silent on this matter. Colonel Hendrickson, in his appearance before this Committee a week ago, agreed with this position by stating that we should deal with the problem of revision by an affirmative statement. However, he did not agree with this method of dealing with the problem although he conceded that there were definite advantages to this proposal. His objections were, first, 'I suspect that with an automatic referendum for revision in our Constitution the question, as has been the case in all the states which had it, would carry every time it was submitted to the people. I am sure that this would be so.' The facts do not support Colonel Hendrickson's 'suspicion.' Michigan, a state quite similar to New Jersey in having both urban and rural population, has a provision in its constitution for periodic referenda. That state has had eight referenda from which only two conventions have resulted. The latest referendum in 1943 was rejected by a vote of 468,000 against 404,804. Another comparable state with an automatic provision in its constitution is Ohio. In 1932 the people there voted against the convening of a convention. Other states with a periodic referendum have not called conventions. It just is not so to say that every referendum for revision is voted on affirmatively by the people. In the case of New Jersey we have had two recent referenda on the question of revision and the reason both of these carried is because there was great need for such revision.

The second point Colonel Hendrickson made was, and I quote, 'We might be called upon to act in the midst of a war crisis which would so deflect and curtail sound thought and action that the people of New Jersey would suffer many serious economic disturbances, etc.' If the people felt that way

they simply would vote 'No' on the proposal for the calling of the convention.

W. Brook Graves, a leading authority on state government and constitutions, in the *Book of the States* wrote: "Whenever the proposal is made to revise a state constitution it is always in danger of defeat from those who admit the need of revision but question the advisability of undertaking the project at the time. If business conditions are good they favor postponement for "fear of rocking the boat." If times are bad they argue that so important a venture should not be undertaken when men are worried and their minds disturbed. If one were to be guided by these prophets of disaster, there never would be a proper time to revise the constitution and the task never would be undertaken."

Colonel Hendrickson brought up the New York Constitution of 1938, which he asserted represented, and I quote from him, 'It was no real improvement upon its predecessor but is filled with a mass of legislative material which has no place in a constitution.' Whether or not the New York Constitution of 1938 represented an improvement may be a matter of division of opinion. Independent students of government have told me that on balance it represented a distinct improvement. I agree with Colonel Hendrickson that that document was unduly laden with 'legislative material.' In this particular no analogy or comparison should be made with our proposed charter, for it is anticipated that we will avoid this serious error.

The fact is that Americans are pretty conservative about their constitution and the record shows that the people are prone to vote against change unless they feel they have a strong and affirmative reason for voting for it. The problem is not to keep the public from undertaking revision without good cause; the problem and the need is to provide effective machinery to permit the undertaking of revision when the public good requires it. Instead of a provision for periodic referendum, causing people unnecessarily to undertake revision, such a provision in a state constitution has seemed to have had the effect of quieting frequent agitation for revision, causing people to defer to the referendum date.

In the 1844 Convention, Delegate Green of Mercer County introduced a proposal for a referendum for a constitutional convention every five years, to be chosen in the same manner and number as the Legislature. He stated his purpose was to provide a means for the majority of the people to express their wish to revise. 'Suppose people rise up and say we wish the whole Constitution revised; what provision have you made for that?' Chief Justice Hornblower in the ensuing debate, stated, "The change in the population, and other circumstances, would happen once in 10 or 15 years, which render it proper that the people should have the power of revising the laws.' He thought there should be a provision to this effect. "The time might come when people would desire a change as to the basis of representation.'

Delegate Jacques of Middlesex further stated 'once every 20 years, because Mr. Jefferson had recommended it, inasmuch as a new generation comes upon the stage about once in 20 years, and every generation ought to have an opportunity to pass upon their fundamental law.' Does not our 'dynamic age' require easier constitutional adjustability?

The need for the future is for a method which will give at least reasonable assurance that the people will have an opportunity to have another constitutional convention without waiting another 100 years to provide the Legislature the means whereby they can exercise this basic right of sovereignty. It is not right that a constitution should put in abeyance the fundamental right of the people to determine their machinery of government. We cannot subscribe to the proposition that the Legislature has a right to limit the power of the people to change their own Constitution, particularly as it effects the Legislative Branch itself. The assurance that the machinery and method of legislation must always remain as it is and never can be changed, without the Legislature's consent, is to concede that the Legislature, and not the people, are sovereign.

A safety valve or two upon precipitate action by the people is desirable and salutary, but in accomplishing this we must avoid that other extreme of imposing a straight jacket upon the will of the people. Representative government should be truly representative. It cannot eternally be cast in a non-representative mold, inflexible and unchangeable to meet changing conditions. Our 'dynamic age' requires flexibility and greater facility for meeting future needs.

We have heard much about the rights of minorities. What about the right of the majority—the right to make majority rule effective? Our Constitution states, 'All political power is inherent in the people.' Is this an idle and meaningless statement? It is, unless we provide a method and the machinery for making it effective. I repeat with Colonel Hendrickson that this Convention cannot be silent on this point but must take affirmative action. Nothing will more surely sow the seeds of serious and grave dissatisfaction with our form of government, on the part of the rank and file of our citizens, than the feeling that they have no clear and unchallenged opportunity for future improvement of their basic charter.

I want to leave a further suggestion with you. I feel very strongly that the proposal I submit is desirable, but I am sincere when I say I want to be helpful to your Committee. I offer this for your consideration."

Mr. Paul then proceeded to read the following:

"Without limiting the inherent right of the people at all times to revise their Constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the Legislature shall submit to the people at least once every 20 years the question 'Shall there be a convention to prepare and submit a revision or amendments to the Constitution?' Such referendum shall be voted on at the first general election held more than 20 years after the last such vote by the people. It shall be the duty of the Legislature to enact legislation to facilitate the holding of such convention, if authorized by vote of the people."

The Chairman then asked if there were any questions and Mr. Pursel asked Mr. Paul if he thought there should be something in the Constitution about a convention. Mr. Paul stated that the Constitution cannot be silent, as was the 1844 Constitution as to future revision.

The Committee formally thanked Mr. Paul for appearing and he was excused.

The Chairman then announced that Mrs. Myra Hacker of the Society of Constitutional Security, Chapter 1, desired to appear. Mrs. Hacker read a brief as follows:

"Revision and Amendment of the Constitution:

1. *Mandatory constitutional convention every 20 years* is opposed to the concept of what a constitution is and should be. A constitution makes for stability, while the principle of change is taken care of by legislation. A constitution deals with fundamentals, which do not change every 20 years—witness the 160 years of the United States Constitution. Such changes as must be made in the Constitution from time to time are provided for by the amending process. If certain individuals think the work of this Convention will be in need of complete reconsideration in 20 years, they do not have a proper understanding of the nature of a constitution and the responsibilities of its framers, and it might be better for the delegates to go home at once.

The basic principles to be established under the Constitution are the supremacy of law and the inviolability of the inalienable rights of the individual. As an instrument the Constitution allocates authority, defines powers and sets up procedures. Those who favor constant revision and too-easy amendment of the Constitution are, perhaps, thinking of it as a

legislative instrument, which it isn't and should not be. Special legislation must never be entrenched—for 20 years or any other period—under the guise of fundamental law.

2. *Amendments.* Since the Constitution should confine itself to basic principles, which are ageless, and to setting up a framework of government, it should not be necessary to amend it frequently, and it would be undesirable to have it amended in haste—unless the present Revision Convention botches it terribly. Therefore, the provisions for amendment should be such as to secure careful consideration before proposed amendments are submitted to the people for acceptance or rejection. Since amendments, like other parts of the Constitution, are intended to last for a long time and to have the sanction of fundamental rightness, they should be able to stand the test of being voted on by two successive sessions of the Legislature.

The initiating of amendments by petition has the same weaknesses as any government by petition—it opens the way for excessive influence of strongly organized pressure groups. In a republic like ours the people elect representatives whose function it is to investigate, discuss, reason, deliberate and decide on matters affecting the public welfare. If an amendment cannot find a single legislator to introduce it, the need for change must not be a crying one. Likewise, if the change does not seem desirable to a second session of the Legislature, after the people and their representatives have had a period of time to consider it, then it presumably does not belong in the fundamental law of the land. Again—beware of those who want by pressure tactics to establish behind the relative security of the Constitution pieces of special interest legislation, and who want it done easily and hastily, before the unorganized majority knows what is happening.

A well-thought-out, stable Constitution, with provision against hasty amending, is a safeguard against the disasters which overtook European governments that went in for so-called 'direct democracy.' It required very little effort under the German Constitution for the Reichstag to turn over its responsibilities to a dictator with pressure groups behind him. The French Constitutions have been unsatisfactory because they have not adequately safeguarded the rights of individuals against organized minorities. The New Jersey Constitution would do well to follow as a basic model not the proven-unsatisfactory European documents or the untried 'Model Constitution' of interested organizations, but the eminently successful and sound Constitution of the United States.

In brief, the Bill of Rights in the Constitution of the State of New Jersey should reiterate the fundamental American ideas of human rights; it should restate them with reverence, to show they are still inviolate and to restore them, if possible, to greater currency in the American thought of today.

3. *Bill of Rights.* The Bill of Rights in Article I of the present New Jersey Constitution is fundamentally sound, and should be retained, with perhaps a few minor changes in phraseology. Basically, it is already in accord with the Bill of Rights in the Federal Constitution.

In paragraph 1, the phrase 'all men' should read 'all persons,' now that women are also regarded as voting citizens.

To paragraph 4, the words 'race or color' should be added. This is in line with the 15th Amendment of the Federal Constitution.

We should guard against introducing totalitarian principles in the Bill of Rights. Our country was founded and has grown great on the philosophy of personal freedom, which holds that government is an agent of its citizens and limits the exercise of political authority to the restrictions of constitutional law, thus preserving the rights of individuals and minorities. The totalitarian philosophy, as opposed to this, has substituted so-called economic security for the masses, and economic control by the government for political and civil liberty. In Germany, Russia, and elsewhere, the totalitarian philosophy has first insinuated itself in the guise of a humanitarian, siding with the underprivileged, the economically adrift. Invari-

ably, however, in a state which gives assurance of economic equality, there has resulted and must continue to result a doing away with a government of checks and balances, principles, rights and obligations, and a substitution of government by bureaucratic planning and decree; coupled with this is a necessary concentration of political, economic and social power, and of control over the means of disseminating thought, which adds up to a complete loss of human rights and freedoms for those who do not slavishly obey the ruling coterie.

In order, therefore, to protect our heritage as Americans, we must guard against inserting clauses in the Bill of Rights which imply that it is the function of government to assure to all a life of unimpeded material comfort and security.

Efforts to substitute, for the common welfare and the equal rights of individuals, the special economic demands of pressure groups, should also be guarded against. To guarantee in the Constitution the right of collective bargaining for certain groups, or old age pensions or job tenure for other groups, would be a creation of vested rights for certain classes or groups, and would be a violation of the principle of equal rights for all under the Constitution. We must not open the way to a domination of the unorganized citizenry of the community by a highly organized pressure group that seeks, with constitutional protection, special privileges for itself at the expense of others.

There has been suggested a section guaranteeing 'the right of people to organize, except. . .'. The exceptions, however, are something of an *ex post facto* nature, barring organizations like the Bund. Since no one can rightly tell what form the subversive organizations of the future will take (and they won't outwardly take a form outlawed by the Constitution, at least not at first), and since the right of assembly is already covered in paragraph 18, those who support such a clause are either advocating a needless reiteration or are, unwittingly, providing a shelter for the Bunds of tomorrow. Let us leave problems regarding organizations to be handled, as they arise, by legislative action.

The problems generally lumped under the broad phrase 'anti-discrimination' can best be handled in the Constitution by the addition to paragraph 4 proposed above. The word 'discrimination' itself, since it denotes motives rather than overt acts, is not a wise choice for use in a legal document."

The Chairman asked if the Committee had any questions. Mr. Carey inquired, if something were placed in the Constitution about the rights of women, what would Mrs. Hacker suggest as to the phrasing of same?

Mrs. Hacker replied that she had no suggestion at this time, but the Board of the New Jersey Federation of Women's Clubs did not wish an equal rights amendment because they thought the rights they already had received might be abrogated. On the other side, university groups are very much interested in the rights of women as represented in the equal rights program.

Mr. Glass asked if Mrs. Hacker's groups would object to adding "national origin or ancestry" to "race, color, or creed." Mrs. Hacker replied that she objected to the word "creed," since that could include communism.

The Chairman asked if there were any other questions. There being none, Mrs. Hacker was formally thanked by the Committee for appearing, and excused.

Mr. Frank G. Schlosser, a delegate from Hudson County, appeared

at this time and stated that he would like to discuss three Proposals he had previously submitted to the Convention in connection with the Bill of Rights.¹ He stated he had been connected with criminal law for about a quarter of a century. The three Proposals were the result of experiences he had had and were things he would like to see corrected.

Mr. Schlosser explained that Proposal No. 1 provides for the addition to the Bill of Rights, Article I of the present Constitution, of a new paragraph abolishing prosecution for common law crimes. He pointed out that in New Jersey there are a great number of offenses that are not in the law books. He stated there are many common law crimes in the English statutes that are not in the New Jersey statutes, and people are sent to prison for three years for such crimes as barratry, bribery, buying and selling office, common law conspiracy, common scold, etc. He further stated that the people would have a better Bill of Rights if this Proposal was adopted, because the result would be to put all of the crimes of New Jersey in one little book obtainable at a nominal sum, similar to the one of New York State.

Mr. Carey inquired if this matter could not be taken care of by legislation. Mr. Schlosser said the Legislature could provide for it, but never has and probably never will.

There was extended discussion on this matter. Mr. Schlosser stated that he was against prosecution for any crime unless that crime is delimited by statute, and he thought that this matter should be taken care of in the Constitution and not by legislation.

Mr. Randolph asked if efforts had been made to get legislation pertaining to criminal law and Mr. Schlosser said that most lawyers are not interested in criminal law but in civil law, and the matter has been lying untouched for 49 years.

Proposal No. 2 by Mr. Schlosser was next presented. This was a proposal to implement the search and seizure clause of the Bill of Rights in the present Constitution, Article I, paragraph 6, by adding thereto a provision forbidding use as evidence, of papers and things obtained by unconstitutional search and seizure.

There was discussion on this Proposal, and the federal laws were compared with the New Jersey laws.

Mr. Schlosser stated that Proposal No. 3 was to revise Article I, paragraph 9, of the Bill of Rights in the present Constitution, by striking out the words "presentment or" and thus requiring grand juries to proceed only by indictment. He pointed out that this Proposal was not designed to change the present law relating to indictments, but merely to prevent grand juries from proceeding with unfair presentments. He further stated that the adoption of this

¹ These Proposals appear in Volume II of these Proceedings.

Proposal would have the effect of discouraging a grand jury from making a libelous presentment against an enemy.

Various committee members stated that they were entirely in accord with Mr. Schlosser's views on this matter. Mr. Carey pointed out this, too, was a matter that could be taken care of by legislation, and Mr. Schlosser reiterated that he thought this matter should be made a part of the new Constitution.

The Chairman asked if there were any other questions. There being none, the Committee thanked Mr. Schlosser for appearing and presenting his views, and he was excused.

The Committee then went into executive session.

Mr. Stanger moved that the Committee close the hearings and complete the work that is before the Committee. Mr. Park seconded the motion, which was duly carried.

It was regularly moved, seconded and carried that the meeting recess until 2:00 P.M.

(The session adjourned for luncheon at 1 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 22, 1947¹

(Afternoon session)

(The session began at 2:00 P.M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

On question put by the Chairman, it was unanimously decided that the Committee hold discussions regarding the various sections for the final draft.

Mr. Park moved that paragraph 16, Article I, Rights and Privileges, read as follows:

“Private property shall not be taken for public use without just compensation; individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.”

Mr. Delaney seconded the motion and a unanimous vote was recorded.

Mr. Stanger moved that paragraph 4, Article I, read as follows:

“There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right or be discriminated against merely on account of his race, color, religious principles, ancestry or national origin.”

The motion was seconded by Mr. Glass and on roll call the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Schenk, Stanger—6

NAYS: Katzenbach, Park, Pursel, Randolph, Taylor—5

On question put by the Chairman, the opposing committee members stated they were not quite satisfied with the draftmanship of the motion.

Mr. Park moved that paragraph 5, Article I, be repeated in terms identical with the 1844 Constitution. Mr. Delaney seconded the motion.

The Chairman then called on Mr. Randolph to submit his proposal on paragraph 5. Mr. Randolph amended Mr. Park's mo-

¹ These minutes were prepared by the Secretary of the Committee.

tion by moving that paragraph 5, Article I, read as follows:

“Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; that no law be passed impairing the freedom of the press or of speech by any mode of communication; that every person shall be free to say, write, publish, or otherwise communicate by any method or in any form whether written, printed, graphic or visual, whatever he will, on any subject, being responsible for any abuse of that liberty.”

Mr. Stanger seconded the motion and on roll call, the following vote was recorded:

AYES: Pursel, Randolph, Stanger—3

NAYS: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Schenk, Taylor—8

The motion, therefore, was declared lost.

The Chairman then called for a vote on Mr. Park's motion that paragraph 5, Article I, be repeated in terms identical with the 1844 Constitution, and the motion was adopted by the following vote:

AYES: Carey, Ferry, Glass, Park, Pursel, Taylor—6

NAYS: Delaney, Katzenbach, Randolph, Stanger—4

NOT VOTING: Schenk—1

The Chairman, in explanation of his position, stated he was sympathetic to the idea of the principle contained in the words “any mode of communication,” but not to the extent of the detailed language of the proposal.

At this time, Mr. Park wished to state for the record that he had changed his mind on the question of paragraph 6, Article I, from that expressed in the first meeting. He moved that paragraph 6, Article I, of the final draft read the same as the 1844 Constitution. Mr. Stanger and Mr. Delaney seconded the motion.

Mr. Randolph amended Mr. Park's motion by moving that the following words: “nothing obtained in violation thereof shall be received into evidence,” be added to paragraph 6, Article I. Mr. Pursel seconded Mr. Randolph's amending motion.

Mr. Park begged leave to read excerpts from *Wigmore on Evidence*, and proceeded to quote therefrom. He cited various cases from the *New Jersey Statutes Annotated*.

Mr. Randolph stated that the Committee should follow the United States Supreme Court and it would be on safer ground, in his opinion, since Wigmore and the Federal Constitution are at odds.

The Chairman called for a question on Mr. Randolph's motion and the following vote was recorded:

AYES: Katzenbach, Pursel, Randolph, Schenk—4

NAYS: Carey, Delaney, Ferry, Glass, Park, Stanger, Taylor—7

The motion, therefore, was declared lost.

The Chairman then called for the question on Mr. Park's motion that paragraph 6, Article I, remain the same as in the 1844 Con-

stitution, and on roll call the motion was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger, Taylor—10

NAYS: Randolph—1

Mr. Park moved that paragraph 7, Article I, read as follows:

“The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six jurors, and the Legislature may authorize the trial of mental incompetency without a trial by jury.”

Mrs. Katzenbach seconded the motion, and on roll call by the Chairman, a unanimous vote was recorded.

Mr. Carey suggested his thought as follows: “Jury trials may be waived in civil and criminal cases under such provisions as the Legislature may create or provide.”

The Chairman then called for proposals on paragraph 9. Mr. Park moved that paragraph 9, Article I, of the final draft read as follows:

“No person shall be held to answer for a capital or otherwise infamous crime, unless on the indictment of a grand jury, except in cases of impeachment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.”

Mrs. Katzenbach seconded the motion and on roll call the following vote was recorded:

AYES: Carey, Katzenbach, Park, Taylor—4

NAYS: Delaney, Ferry, Glass, Pursel, Randolph, Schenk, Stanger—7

The motion, therefore, was declared lost.

Mr. Pursel made a motion that paragraph 9, Article I, read as follows in the final draft:

“No person shall be held to answer for a criminal offense, unless on the indictment of a grand jury, except in cases of impeachment or in cases now prosecuted by indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.”

Mr. Stanger seconded the motion, and on roll call the motion was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Pursel, Randolph, Schenk, Stanger, Taylor—10

NOT VOTING: Park—1

The Chairman then call for proposals on Article II, Rights of Suffrage.

Mrs. Katzenbach suggested that clause 3, paragraph 1, Article II, read as follows:

“no idiot or mentally incompetent person shall enjoy the rights of an elector.”

Mr. Pursel agreed, and Mr. Ferry suggested that perhaps a better

word would be "lunatic," in place of "mentally incompetent." A general discussion followed.

The Chairman called for a motion on clause 4, paragraph 1, Article II. Mr. Ferry made a motion that clause 4 read as follows in the final draft:

"And provided further, that in time of war no elector in the actual military service of the State, or of the United States, in the armed forces thereof, shall be deprived of his vote by reason of his absence from such election district; and in time of peace the Legislature may provide for absentee voting by members of the armed forces."

Mr. Stanger seconded the motion, and on roll call the motion was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Randolph, Schenk, Stanger, Taylor—8

NAYS: Katzenbach, Park, Pursel—3

The Chairman stated that he wished to inform the Committee that the final Committee Proposals must be submitted formally to the Secretary of the Convention on July 31, 1947.

On motion made, seconded and carried, the meeting adjourned to Wednesday, July 23, 1947 at 10:00 A.M.

(The session adjourned at 5:30 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 23, 1947¹

(Morning session)

(The session began at 10:00 A.M.)

The tenth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.²

Chairman John F. Schenk presided.

Mr. Carey stated that on Tuesday evening, at 8:05 P.M., he had the pleasure of listening to four members of the Committee on the radio, namely Messrs. Schenk, Ferry, Randolph and Stanger. He said they had constituted the membership of a round-table discussion group presented on the radio by Rutgers University and the four of them "did themselves proud and gave a beautiful and fair picture of what the Committee is doing." Mr. Carey said he was very proud of the four members of the Committee; and he had learned that the man who was managing the production of the broadcast was regretful when the time came to an end.

At this time, Mr. Park moved that the Committee reconsider Article I, paragraph 9, pertaining to the word "presentment" by a grand jury. The motion was seconded by Mr. Taylor.

Mr. Park read a letter he had written to Attorney-General Walter D. Van Riper under date of July 18, 1947, pertaining to Article I, paragraph 9. The Attorney-General's reply thereto under date of July 22, 1947, was then reviewed. It was the consensus that the Committee should concur with the judgment of the Attorney-General in that paragraph 9 remain as it is in the 1844 Constitution.

It was directed that the two above mentioned letters be spread in full in these minutes:

¹ These minutes were prepared by the Secretary of the Committee.

² Mr. Randolph appeared at the close of the morning session. His vote on two motions was particularly recorded at his request, as noted at the close of the minutes for the session.

"July 18, 1947

Hon. Walter D. Van Riper
 Attorney-General of New Jersey
 State House, Trenton, New Jersey

Dear Mr. Van Riper:

I discussed the subject of this letter with Mr. Backes today on the telephone. He suggested that my request for information be put in writing.

Mr. Schlosser in the Constitution Convention by Proposal No. 3, which has been referred to our Committee on Bill of Rights, etc., urges that Article I, paragraph 9 of the Bill of Rights, be amended by striking out the words 'presentment or.' If adopted, the first part would read: 'No person shall be held to answer for a criminal offense, unless on the indictment of a grand jury * * *.'

In committee discussion, even among the lawyers, there was a great deal of concern as to the effect of this proposition. We need your advice. Our questions are these: (1) Would the proposal prevent a grand jury from making an independent inquiry and bringing in an indictment even though the county prosecutor might not want it or be opposed to it? (2) Would it limit the function of a grand jury to only those matters formally brought before the body? These are the legal questions.

The other questions are of a practical nature, and your office might not have the information readily available, but if it is available and you desire to submit information it would be of help. How frequently is the procedure of 'presentment' actually invoked? Do you know of instances where persons have been harmed by the procedure so that they have no legal remedies? Does the Department of Law believe that the proposal would help or hinder the administration of justice?

Will you please send your reply directly to New Brunswick, and, if possible, so that we can have it for our meeting on Tuesday.

Very truly yours,

LAWRENCE N. PARK, Delegate

Gloucester County

Secretary, Committee on Bill of Rights, etc."

"July 22, 1947

Hon. Lawrence N. Park
 Constitutional Convention
 New Brunswick, New Jersey

My dear Mr. Park:

Under date of the 18th instant you wrote me with reference to Proposal No. 3 which has been referred to your Committee, the effect of which is to strike out the words 'presentment or' from paragraph 9 of Article I.

You ask our opinion on the following questions:

'(1) Would the proposal prevent a grand jury from making an independent inquiry and bringing in an indictment even though the prosecutor might not want it or be opposed to it?' Our answer to this is, no, it would not prevent a grand jury from making such an inquiry. The right of a grand jury to make an inquiry independently of the prosecutor of the county is an inherent common law right which is in no wise affected by this provision in the Constitution.

Your next question is: '(2) Would it limit the function of a grand jury to only those matters formally brought before the body?' Our answer to this is also in the negative, and the answer to the previous question partly furnishes the reason for the answer to this one. A grand jury also has the fundamental right to inquire into any matters which are pertinent to an exercise of its powers and is universally so charged by the court when entering upon its duties.

Your letter then proceeds to ask the further questions: (1) As to how frequently the procedure of 'presentment' is actually invoked. I am not able to give your Committee actual statistical information as to how many

presentments are returned by the grand juries of this State. I am sure, however, that I am safe in saying that while frequently grand juries return presentments into court, the number of presentments which are returned in comparison to the number of indictments are infinitesimal and negligible. I know that in many counties grand juries from time to time return presentments, not charging a crime, but usually calling attention to conditions which exist and which may or may not require further grand jury or investigatory action. Many times grand juries make presentments to court concerning the operation of public institutions within the county, the condition of highways, etc.

You ask the question as to whether I know of instances where persons have been harmed by the procedure of returning a presentment. I do, in rare instances—the return of a presentment even though it does not charge a crime but charging public officials, for instance, with laxity or misconduct or other activity incompatible with the proper performance of their duties can, of course, and has, in instances, caused considerable harm to the individual named. However, if the facts upon which the grand jury bases the presentment warrant the allegations therein, then the harm cannot be complained of as being unjustified. By the same token, a person may be greatly injured by the return of an unwarranted and unjustified indictment, as has happened many times, in cases where the evidence was so lacking as to not justify an indictment and requiring its being *nolle prossed* without going to trial, and yet, merely because the power of indictment has, at times, been used unwisely and even abused, no one would suggest eliminating from the Constitution the power of a grand jury to indict.

You then ask the further question as to whether or not the Department of Law believes that 'the proposal would help or hinder the administration of justice.' In asking this question, you not only ask us for our legal opinion, but for our view on a matter of policy and I am going to take full advantage of your invitation by saying most emphatically that it is the very definite and considered judgment of my staff and myself that the adoption of this proposal and the elimination of the words 'presentment or' from the constitutional provision would hinder the administration of justice in this State and would not be in the best interest of law enforcement.

As a matter of fact, from the earliest common law days, the words 'presentment' and 'indictment' have been considered to be synonymous. Blackstone says that 'a presentment, generally taken, is a very comprehensive term; including not only presentments, properly so called, but also inquisitions of office and indictments by a grand jury.' Our criminal procedure statute, adopted as long ago as 1898 and still in effect, says that 'the finding of an indictment' includes 'the taking of an inquisition' and 'making a presentment,' and the statute also defines the word 'indictment' as including 'presentment.'

In other words, we have in this State by statute adopted the common law principle that the words 'indictment' and 'presentment' are interchangeable. As a matter of practice, I know of no case in this State where a person has actually been brought to trial on a 'presentment.' It is the established practice wherever it is sought to charge a person with a crime, to have prepared and voted by the grand jury an indictment. The test as to whether a paper handed to the court by the grand jury is an indictment or not is: Does it charge a crime and does it contain all of the constitutional requirements for an indictment? In other words, if the body of the paper was in every sense an indictment but was labelled on the back of it 'presentment,' instead of 'indictment,' the person charged therein with having violated the law could be brought to trial just the same.

The courts have long recognized the right of grand juries to make inquiry, either at the direction of the court and with the aid of the prosecutor or upon their own initiative, and to report their findings to the court by means of a presentment. It may very well be, as I am sure you can conceive, that a situation would arise whereby the grand jury deemed it advisable to inquire into a certain situation; the prosecutor may disagree and may refuse to cooperate in that investigation; the grand jury may

carry on its own investigation and if it finds that an indictment should be returned, it may first return a presentment to the court calling attention to its investigation and setting forth that a crime has been committed and requesting that an indictment be prepared, in which case it would be the duty of the prosecutor or some other officer of the court to prepare an indictment and submit it to the grand jury for its approval or disapproval. As a matter of fact, that was the practice under the common law.

Our grand juries are, of course, an arm of the court and therefore an essential part of the administration of justice. In view of the fact that as such they have the fundamental inherent right to return a presentment either with or without the constitutional provision of which we are speaking, certainly no harm could come to the individual by leaving the provision in the Constitution in the exact language in which it now is, and I repeat, in our judgment, to change this provision by taking out the words 'presentment or' would take out of our Constitution a provision of the common law which has been in force in this State from colonial times and would tend to weaken the due administration of justice.

Thank you very much for the opportunity to cooperate with your Committee on this very important matter.

Sincerely yours,

WALTER D. VAN RIPER
Attorney-General"

Mr. Ferry then moved that paragraph 9 of Article I remain the same as in the 1844 Constitution. The motion was seconded by Mr. Taylor, and on roll call carried.

Mr. Park moved that a new paragraph be incorporated into the Bill of Rights as follows:

"Employees shall have the right to bargain collectively through representatives of their own choosing."

Mr. Taylor seconded the motion.

After a discussion by the Chairman of the necessity, in his opinion, not to reduce the supreme state authority to the status of only an equal in a bargaining negotiation, since the state authority must ultimately be supreme to prevent chaos, Mr. Park moved to amend his motion to read as follows:

"Private employees shall have the right to bargain collectively through representatives of their own choosing."

The Chairman presented a suggested clause reading as follows for consideration:

"The right of privately employed labor to organize and bargain collectively and the right of publicly employed labor to organize and present to, and make known to the State, or any of its political subdivisions, its opinions, through representatives of its own choosing, shall not be impaired."

After discussion and changes of wording as proposed by various committee members, Mr. Stanger moved to amend Mr. Park's motion to read as follows:

"The right of privately employed workers to organize and bargain collectively and the right of publicly employed workers to organize and present to, and make known to the State, or any of its political subdivisions, their grievances and requests, through representatives of their own choosing, shall not be impaired."

The motion was seconded by Mr. Park.

Mr. Carey pointed out that cardinal principles relating to equal rights for all citizens must be kept, and if the Bill of Rights, as in the Federal Constitution, which has not been changed for years, is followed then New Jersey would have a good Constitution. He further stated that he could see no reason why one class of social life should be given express treatment in the Constitution, since it is not a special privilege Constitution, but fundamental law. He further stated that there are very few states in this Union that have labor provisions in their constitutions—probably two or three states—and if a labor provision should be inserted in the Constitution, it would be against reason, against the theories of law, not democratic, and against the policies of America.

There was considerable discussion by other members of the Committee whether a provision should be added to the Bill of Rights pertaining to labor.

Mr. Carey then moved to amend Mr. Park's motion as follows:

"but the right of employees to strike against the public is hereby prohibited."

There was no second to the motion and it was, therefore, declared lost.

Mr. Carey then moved to amend Mr. Park's motion as follows:

"That nothing herein contained shall be construed to grant the right to strike where any public work or service is involved."

There was no second to this motion and it was, therefore, declared lost.

Mr. Park then asked for the question on his motion and, on roll call, it was adopted by the following vote:

AYES: Glass, Katzenbach, Park, Pursel, Randolph, Stanger, Taylor—7

NAYS: Carey, Delaney, Ferry, Schenk—4

Mr. Ferry stated he would like it noted in the record that he was not opposed to giving labor any of the rights they would secure in the proposed clause, but he felt that the matter was within the province of the Legislature only and was not a constitutional matter, and that that was the only reason he was voting "No." He also stated that he desired the Committee to memorialize the Legislature to enact this very provision into law.

The Chairman and Mr. Delaney remarked that they were entirely in accord with Mr. Ferry's views and also thought it should be a matter of legislation. The Chairman stated that he felt workers already had all the rights mentioned, that he recognized they should be set down in a clear statement by the Convention or the Legislature, and with him it was merely a matter of doing it in the right place—by legislative action.

Mr. Carey suggested that the Chairman communicate with the Governor in accordance with Mr. Ferry's request, and further re-

quest that the Legislature shall immediately take steps to adopt legislation which will absolutely define the rights of workmen to strike in any avenue of civic endeavor or economic endeavor in the State. The Chairman said he would communicate with the Governor in accordance with the request of Mr. Carey in due course.

Mrs. Katzenbach moved that the motion just passed pertaining to labor be added to paragraph 18 of Article I. The motion was seconded by Mr. Park and, on roll call, adopted by the following vote:

AYES: Glass, Katzenbach, Park, Pursel, Schenk, Taylor—6

NAYS: Carey—1

NOT VOTING: Delaney, Ferry, Stanger—3

Mr. Carey remarked that in his judgment the addition of such a provision pertaining to labor in the Constitution would permit strikes on public work.

Mr. Glass stated that he would like to present the following resolution:

“RESOLVED that the following be agreed upon as part of the proposed new State Constitution:

Proposal No. 11. ‘Benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.’”

Mr. Carey seconded the proposal, after which there was extended discussion on this matter by the various members of the Committee.

Mr. Glass called for a vote on the question and, on roll call, the following vote was recorded:

AYES: Carey, Delaney, Ferry, Glass, Stanger—5

NAYS: Katzenbach, Park, Pursel, Randolph, Schenk, Taylor—6

The motion was, therefore, declared lost.

Mr. Glass then moved that the following be inserted into the Constitution:

“Notwithstanding anything in the Constitution contained, the Legislature shall have the power to grant preferences, privileges, and exemptions to persons serving or who shall have served in the armed forces of the United States of America in time of war, as may be defined by it.”

Mr. Glass accepted the Chairman’s suggestion to insert “honorably” in the correct places.

Mr. Park seconded the motion and, after discussion on this matter, it was decided to lay the matter on the table until it is determined whether it is a privilege or a legislative matter.

At this time, Mr. Taylor moved the adoption of Proposal No. 7 by Mrs. Peterson providing that provision be made for the use of the initiative and referendum.¹

The motion was seconded by Mr. Park and on roll call the following vote was recorded:

AYES: Taylor—1

¹ The Proposal appears in Volume II of these Proceedings.

NAYS: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger—9

The motion was, therefore, declared lost.

Mr. Glass stated that he was against this proposal for the reason that it definitely takes away the authority from duly elected bodies who should handle such matters.

Mr. Park moved the adoption of Proposal No. 1 by Frank G. Schlosser providing for the addition of a new paragraph to Article I of the present Constitution, abolishing prosecution for common law crimes.¹

The motion was seconded by Mr. Taylor and, on roll call, the following vote was recorded:

AYES: None—0

NAYS: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger, Taylor—10

The motion was, therefore, declared lost.

Mr. Park moved that Proposal No. 2 submitted by Frank G. Schlosser providing for an addition to the search and seizure clause of the Bill of Rights, forbidding use as evidence of papers and things obtained by unconstitutional search and seizure, be not approved.¹

The motion was seconded by Mr. Ferry and, on roll call, adopted by unanimous vote.

Mr. Park then moved that Proposal No. 3 submitted by Frank G. Schlosser to revise Article I, paragraph 9, of the Bill of Rights by striking out the words "presentment or" be not approved. Mr. Pursel seconded the motion and, on roll call, it was adopted by unanimous vote.¹

Mr. Oliver Randolph appeared at this time and asked to be recorded as noted previously on the collective bargaining vote and proposal No. 11.

Mr. Glass moved that paragraph 2 of Article VIII in the final draft read as follows:

"All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: 'The State of New Jersey, to, Greeting.'"

The motion was seconded by Mr. Stanger and, on roll call, adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Randolph, Pursel, Schenk, Stanger, Taylor—10

NAYS: Park—1

It was regularly moved, seconded and carried that the meeting recess until 2:00 P.M.

(The session adjourned for luncheon at 1:00 P.M.)

¹ The Proposal appears in Volume II of these Proceedings.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 23, 1947¹

(Afternoon session)

(The session began at 2:00 P.M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman suggested that the Committee take under consideration the matter of Proposals submitted to the Committee.

Mr. Park moved that paragraph 7, Article I, be altered by including the words "issue of" after the words "authorized the trial of," the paragraph to read as follows in the final draft:

"The right of a trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six jurors, and the Legislature may authorize the trial of the issue of mental incompetency without a trial by jury."

Mr. Delaney seconded the motion and on roll call a unanimous vote was recorded.

Mr. Carey moved, with reference to Proposal No. 7, submitted to the Committee by Mr. Winston Paul, that the Committee put themselves on record as being opposed to the adoption of this resolution.² Mr. Ferry seconded the motion and, on roll call, it was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger—9

NAYS: Randolph, Taylor—2

Mr. Stanger moved that paragraph 4, Article I, be separated into two distinct paragraphs. Mr. Park seconded the motion.

Mr. Delaney amended Mr. Stanger's motion by moving that the word "merely" be deleted from paragraph 4, Article I. Mr. Glass seconded the motion.

Mr. Glass further amended the motions made by Mr. Stanger and Mr. Delaney by moving that the word "his" be deleted from paragraph 4, Article I. Mr. Park seconded the motion.

¹ These minutes were prepared by the Secretary of the Committee.

² The Proposal appears in Volume II of these Proceedings.

The Chairman called for a vote on the motions made by Mr. Stanger, Mr. Delaney and Mr. Glass and, on roll call, it was adopted that paragraph 4, Article I, read as follows in the final draft:

"4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of or be discriminated against in his civil rights on account of religious principles, race, color, ancestry or national origin."

At this time, the Chairman suggested to the Committee that they refer to the draft which he had submitted to the Committee regarding Amendments.

Mr. Park moved that in going over the submitted draft that each sentence in paragraph 1, Article IX, Amendments, be voted on separately, and that the first sentence in paragraph 1 read as follows:

"Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly."

Mr. Ferry seconded the motion and, on roll call, it was adopted by the following vote:

AYES: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—10

NAYS: Carey—1

Mr. Carey stated, at this time, that he wished to reserve the right to oppose.

Mr. Park moved that the second sentence of paragraph 1, Article IX, read as follows:

"Prior to a vote in the house in which such amendment or amendments are first introduced, the same shall be printed and on the desks of the members thereof at least 20 calendar days, and a public hearing shall be held thereon."

Mr. Pursel seconded the motion and, on roll call, it was adopted by the following vote:

AYES: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—10

NAYS: Carey—1

Mr. Park moved that the third sentence of paragraph 1, Article IX, read as follows:

"If the proposed amendment or amendments shall be agreed to by a three-fifths vote of all the members of each of the two houses, then the same shall be presented to the Governor."

Mr. Pursel seconded the motion and it was adopted, on roll call, by the following vote:

AYES: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger—9

NAYS: Carey, Taylor—2

Mr. Park moved that the fourth sentence of paragraph 1, Article IX, read as follows:

"If the Governor approves the proposed amendment or amendments or

if he fails to take any action thereon within 15 days, the same shall be submitted to the people."

Mr. Pursel seconded the motion and it was adopted, on roll call, by the following vote:

AYES: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger—9

NAYS: Carey, Taylor—2

Mr. Park moved that the fifth sentence of paragraph 1, Article IX, read as follows:

"If the Governor disapproves the proposed amendment or amendments, the same shall not be submitted to the people unless the Legislature shall re-pass the proposed amendment or amendments by a two-thirds vote of all the members of each of the two houses."

Mr. Pursel seconded the motion. Mr. Ferry amended Mr. Park's motion by moving that the word "disapproves" be deleted and the word "vetoes" substituted therefor. Mr. Park seconded the motion and it was adopted, on roll call, by the following vote:

AYES: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Taylor—9

NAYS: Carey, Stanger—2

Mr. Stanger stated that he would like it noted in the record that he voted against the foregoing motion because he felt that if the Governor took no action on a proposed amendment, it should go back to the Legislature for an additional vote.

Mr. Park moved that paragraph 2 of Article IX read as follows:

"Such proposed amendment or amendments shall be entered on the journals of each of the two houses with the yeas and nays taken thereon."

Mr. Stanger seconded the motion and, on roll call, it was adopted by unanimous vote.

Mr. Park moved that paragraph 3 of Article IX read as follows:

"The Legislature shall cause to be published such proposed amendment or amendments once, in at least one newspaper of each county, if any be published therein, not less than three months prior to its submission to the people."

The motion was seconded by Mr. Stanger and adopted by a unanimous vote.

Mr. Park moved that paragraph 4 of Article IX read as follows:

"Such proposed amendment or amendments shall be submitted to the people at the general election next succeeding the publication, in such manner as the Legislature shall prescribe."

The motion was seconded by Mr. Pursel. Mr. Stanger moved to amend Mr. Park's motion to read as follows:

"Such proposed amendment or amendments shall be submitted to the people in the form provided by the Legislature, at the next general election following the expiration of the aforesaid three-month period immediately after such publication."

The amendment was accepted by Mr. Park and it was adopted, on roll call, by the following vote:

AYES: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—10

NAYS: Carey—1

Mr. Park moved that paragraph 5 of Article IX read as follows:

“If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.”

Mr. Taylor seconded the motion and, on roll call, it was adopted by unanimous vote.

Mr. Park moved that paragraph 6 of Article IX read as follows:

“If at the election the people shall approve such proposed amendment or amendments, or any of them, by a majority of the legally qualified voters of this State voting thereon, such amendment or amendments, or any of them, so approved shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment or amendments, or any of them, thus approved.”

Mr. Taylor seconded the motion and, on roll call, it was adopted by unanimous vote.

Mr. Ferry moved that paragraph 7 of Article IX read as follows, first accepting the Chairman’s suggestion to change the words “for three years” to “before the third general election thereafter”:

“If at the election the people shall not approve any amendment, said amendment or one to effect the same or substantially the same change in the Constitution shall not be submitted to the people before the third general election thereafter.”

The motion was seconded by Mrs. Katzenbach and, on roll call, the following vote was recorded:

AYES: Delaney, Ferry, Glass, Katzenbach, Pursel, Randolph, Schenk, Stanger—8

NAYS: Carey, Park, Taylor—3

Mr. Park moved that no other proposed paragraphs be included in Article IX than those set forth above. The motion was seconded by Mr. Pursel and adopted, on roll call, by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger, Taylor—10

NOT VOTING: Randolph—1

Mr. Carey, after presenting several reasons, including the vital necessity for an amending process that gives the people adequate time to study and reason out proposed amendments, and the benefits of having to pass two successive sessions of the Legislature as the proper test of need and value, moved that all paragraphs of Article IX read the same as the 1844 Constitution with the exception of paragraphs 2, 3, 5, and 6, and with the further proviso that amendments be submitted to the people at general elections.

Mr. Ferry seconded the motion. He stated he would like it noted for the record that he seconded Mr. Carey’s action because he felt that Mr. Carey had brought out many good points and inherent dangers in the proposed amending process. Other committee mem-

bers expressed, in general, the same views as Mr. Ferry on this matter.

On roll call, the following vote was recorded:

AYES: Carey, Ferry, Schenk, Stanger—4

NAYS: Delaney, Glass, Katzenbach, Park, Pursel, Randolph, Taylor—7

Mr. Park moved that Proposal No. 6, submitted by Mr. Percy Camp, be referred to the Governor for legislative action.¹ The motion was seconded by Mr. Taylor and adopted, on roll call, by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Taylor—9

NAYS: Schenk, Stanger—2

Pertaining to Proposal No. 16, submitted by Mr. Oliver Randolph, Mr. Park made a motion that the Committee report to the Convention that the proposal had been adopted in part.¹ The motion was seconded by Mr. Stanger.

Mr. Randolph moved to amend Mr. Park's motion pertaining to paragraph 4, Article I, and that Proposal No. 16 be substituted therefor. The motion was seconded by Mr. Pursel and, on roll call, the following vote was recorded:

AYES: Pursel, Randolph, Taylor—3

NAYS: Carey, Delaney, Ferry, Katzenbach, Park, Schenk, Stanger—7

NOT VOTING: Glass—1

The motion was, therefore, declared lost.

The committee members who voted against the foregoing motion stated in substance that they did so because they felt the paragraph as previously approved by the Committee was broader, stronger and more inclusive than Proposal No. 16 as submitted by Mr. Randolph.

Mr. Park moved that Proposal No. 13 submitted by Mrs. Peterson not be adopted.¹ Mrs. Katzenbach seconded the motion and, on roll call, it was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Katzenbach, Park, Pursel, Randolph, Schenk—8

NAYS: Glass, Taylor—2

NOT VOTING: Stanger—1

Mr. Park moved that the Convention be informed that Proposals Nos. 9 and 28 have been adopted in part.¹ The motion was seconded by Mr. Pursel and adopted, on roll call, by unanimous vote.

Mr. Park moved that Proposal No. 27 not be adopted.¹ The motion was seconded by Mr. Glass and, on roll call, adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel,

¹ The Proposal appears in Volume II of these Proceedings.

Schenk, Stanger—9

NAYS: Randolph, Taylor—2

Pertaining to Proposal No. 26, Mr. Park moved that the Committee report to the Convention that the proposal had been adopted in part.¹ The motion was seconded by Mr. Stanger and, on roll call, adopted by unanimous vote.

Mr. Park moved that Proposal No. 37, submitted by Mrs. Jane Barus, be rejected.¹ The motion was seconded by Mr. Glass and, on roll call, adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger—10

NAYS: Taylor—1

Pertaining to Proposal No. 29 submitted by Mr. Oliver Randolph, Mr. Park made a motion that the Committee report to the Convention that the proposal had been adopted in part.¹ Mrs. Katzenbach seconded the motion and, on roll call, it was adopted by unanimous vote.

At this time the Chairman stated that he desired to inform the Committee that Article II, "Right of Suffrage," should hereafter be entitled "Elections and Suffrage," and additional material be included—in his opinion.

The Chairman asked the Committee what was its pleasure regarding the holding of further public hearings. Mr. Park moved that the Committee have no further public hearings, which motion was seconded by Mr. Glass and, on roll call, adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Schenk, Stanger—8

NAYS: Pursel, Randolph, Taylor—3

The Chairman stated he felt the Committee might have some work to do on the Schedule and if that proved to be the case, he would try and get it ready for the Committee before July 31.

Mr. Park moved that the subject of equal rights of women be discarded. Mr. Taylor seconded the motion and, on roll call, the following vote was recorded:

AYES: Glass, Park, Pursel, Randolph, Taylor—5

NAYS: Carey, Delaney, Ferry, Katzenbach, Schenk, Stanger—6

The motion was, therefore, declared lost.

The Chairman was directed by the Committee to try and bring in a recommendation on the "equal rights" question for women, reconciling it, if possible, with legislation now giving women special treatment.

It was regularly moved, seconded and carried that the meeting adjourn until Tuesday, July 29, at 11:00 A. M.

(The session adjourned at 4:30 P. M.)

¹ The Proposal appears in Volume II of these Proceedings.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 29, 1947¹

(Morning session)

(The session began at 11:30 A. M.)

The eleventh meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The Chairman informed the Committee that representatives of the New Jersey Civil Service Association, Inc., were present and desired to appear before the Committee and present a brief. He asked what was the pleasure of the Committee in view of the motion passed at the meeting of July 22, 1947 that the public hearings be closed. He further noted for the record that he had, at Mr. Mulligan's request, given him and his group, including Mr. Markley, a stated time to testify, July 9, 10:00 A. M., at the public hearing scheduled for such matters, and that neither Mr. Mulligan nor any of his group had appeared or notified the Committee that they could not keep their appointment.

Mr. Taylor moved that the representatives of the New Jersey Civil Service Association, Inc., be heard, with the proviso that they be allotted their requested ten minutes only. The motion was seconded by Mr. Carey and, on roll call, it was adopted by unanimous vote.

Messrs. Mulligan, Markley, Hardman and Walker, representing the Association, appeared at this time. Mr. Edward A. Markley, counsel for the Association, submitted a brief² to the committee members setting forth two clauses which the Association would like to have included in the Constitution, namely:

Clause No. 1: Establishing merit as the basis of civil service in the State and its civil divisions and agencies.

¹ These minutes were prepared by the Secretary of the Committee.

² This brief appears in the Appendix to the Proceedings of the Committee on the Executive, Militia and Civil Officers.

Clause No. 2: Establishing pensions in the State and its civil divisions and agencies.

Mr. Markley stated that the brief contained everything that he could say, with the exception that in the 1944 draft of the Constitution there was a provision substantially the same as the Association's clause No. 1 in the brief, and at that time there was no opposition to the proposal.

In response to a question by the Chairman, Mr. Markley stated that the proposed clause No. 1 did force civil service on communities that do not have it now.

Mr. Glass inquired if school teachers would be affected and Mr. Walker said they would not, but it would affect janitors, etc.

Mr. Carey inquired as to the reason for a contractual relationship, as set forth in clause No. 2, as the matter of pensions was already taken care of by statute.

In the brief presented it was stated that the following will shortly come under civil service: Union City, Weehawken, Bordentown, Lodi, and Hunterdon County.

The Chairman said he wanted it noted for the record that he disagreed with Mr. Markley's statement that everybody was in favor of civil service, because the people in Hunterdon County had voted the matter down recently, and as far as he knew Hunterdon County did not anticipate coming under civil service in the near future.

Mr. Park pointed out that in his opinion there were two defects in the proposals submitted by the Association, namely, (1) you do not have any substantial reason to believe that you are going to lose civil service; and (2) you do force a lot of municipalities to adopt it.

Mr. Markley stated that if the Committee did not see fit to include clause No. 2 in the proposed Constitution, the Association did hope that clause No. 1, as presented, would be approved by the Committee for inclusion.

There being no further questions, the gentlemen were excused after having been heard for about one-half hour, and the Committee went into executive session.

Mr. Park moved that in paragraph 8, Article I, the word "persons" be substituted for the word "jurors" and that a semicolon be placed after the word "persons." The motion was seconded by Mr. Pursel and, on roll call, adopted by unanimous vote.

As to paragraph 10, Article I, Mr. Park moved that this section be accepted as set forth in the tentative draft compiled by the Chairman, which reads as follows:

"10. No person shall be held to answer for a criminal offense, unless on the indictment of a grand jury, except in cases of impeachment or in cases not now prosecuted by indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger."

The motion was seconded by Mr. Stanger and, on roll call, adopted by unanimous vote.

As to paragraph 19, Article I, Mr. Park moved that, as suggested by the Chairman, it read as follows in order to clarify the language by substituting the word "labor" for the word "workers":

"19. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances. The right of privately employed labor to organize and bargain collectively and the right of publicly employed labor to organize and present to, and make known to the State, or any of its political subdivisions, their grievances and requests, through representatives of their own choosing, shall not be impaired."

The motion was seconded by Mr. Taylor and, on roll call, adopted by the following vote:

AYES: Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger, Taylor—8

NAYS: Carey, Delaney, Ferry—3

Mr. Carey stated that he objected absolutely to placing anything in the Constitution on the subject matter of labor as proposed, because it is not, in his opinion, the proper treatment for such a matter, but is a matter of legislative disposition. He further stated that the United States Constitution does not have any reference to such subject and that labor has never made any suggestion in Congress to have such a provision placed in the Constitution of the United States. Mr. Carey said that if a provision is made in the Constitution for collective bargaining, it could be construed to give the right to strike and the right to peacefully picket. He moved that the second sentence of paragraph 19, Article I, pertaining to labor, be stricken. There was no second to the motion and it was, therefore, declared lost.

It was regularly moved, seconded and carried that the meeting recess until 2:00 P. M.

(The session adjourned for luncheon at 1:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, July 29, 1947¹

(Afternoon session)

(The session began at 2:15 P. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

Mr. Park made a motion that paragraph 6, Article II, Elections and Suffrage, be altered by the substitution of the word "his" for "such," before the words "election district." Mr. Delaney seconded the motion.

The Chairman suggested that the word "his" be dropped, before the word "absence," which suggestion was accepted by Mr. Park.

Mr. Park then moved that paragraph 6, Article II, read as follows:

"6. In time of war no elector in the actual military service of the State, or of the United States, in the armed forces thereof, shall be deprived of his vote by reason of absence from his election district; and in time of peace the Legislature may provide for absentee voting by members of the armed forces."

Mrs. Katzenbach seconded the motion and, on roll call, it was adopted by unanimous vote.

Mr. Stanger amended Mr. Park's motion by moving that paragraph 6, Article II, instead of the foregoing, read as follows in the final draft:

"6. In time of war no elector in the actual military service of the State, or of the United States, in the armed forces thereof, shall be deprived of his vote by reason of absence from his election district; the Legislature may provide for absentee voting by members of the armed forces in time of peace."

Mr. Park accepted Mr. Stanger's amended motion, by seconding the motion and, on roll call, it was adopted by unanimous vote.

Mrs. Katzenbach suggested considering the question of citizens who will forever be confined in the veterans' hospitals or navy homes, etc., and their right of franchise as related to absentee voting. She read part of the New York Constitution. The Chairman then asked the committee members for suggestions regarding Mrs. Katzen-

¹ These minutes were prepared by the Secretary of the Committee.

bach's thought, and inquired whether the Committee wished to do anything at this time about this particular group.

Mr. Delaney suggested the words "disabled veterans" or "former members of the armed forces" be considered before the words "in time of peace."

Mr. Park moved that paragraph 6, Article II, be retained as previously adopted. Mr. Ferry seconded the motion.

The Chairman asked for further remarks, and Mr. Glass stated that he thought it should be reconsidered. On roll call by the Chairman, the following vote was recorded:

AYES: Carey, Delaney, Ferry, Park, Pursel, Schenk, Stanger, Taylor—8

NAYS: Glass, Katzenbach—2

NOT VOTING: Randolph—1

Mrs. Katzenbach suggested that paragraphs 6 and 7, Article II, should follow immediately after paragraph 3, and changed to read as paragraph 4 thereafter. Mrs. Katzenbach also suggested that the Committee give more thought to her previous suggestion relating to absentee voters who are forever confined in army and navy hospitals.

The Chairman suggested that Mrs. Katzenbach might care to make a statement regarding this subject for the record. Mrs. Katzenbach moved to amend paragraph 6, Article II, to include "qualified voters confined to army or navy hospitals, etc." The motion was not seconded and was, therefore, declared lost.

Mr. Park moved that the contents of paragraphs 6 and 7 be embodied into one paragraph. Mr. Pursel seconded the motion and, on roll call, it was adopted by unanimous vote.

Mrs. Katzenbach moved that paragraphs 6 and 7, so consolidated, shall be placed after paragraph 3, and become paragraph 4 hereafter. Mr. Glass seconded the motion and, on roll call, it was adopted by unanimous vote.

Mr. Randolph inquired of the Committee that as the clause now reads, would it not mean that if a person accepted a position in Washington, D. C., or in civil service, the person would lose the right to vote by reason of being absent from his or her election district. After extended discussion, the Chairman asked the committee members to try to clear the point.

Mr. Taylor made a motion that paragraph 4 stay as it was amended. Mr. Pursel seconded the motion and, on roll call, the following vote was recorded:

AYES: Carey, Delaney, Ferry, Katzenbach, Park, Pursel, Schenk, Stanger, Taylor—9

NAYS: Randolph—1

NOT VOTING: Glass—1

Mrs. Katzenbach made a motion that the new paragraph 7, Arti-

cle II, be changed to read as follows:

"7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as may be designated by the Legislature; any person convicted of any such crime, and who may be pardoned or otherwise restored by law to the right of suffrage shall enjoy the right of an elector."

Mr. Glass seconded the motion and, on roll call, it was adopted by unanimous vote.

The Chairman inquired about Article IX, paragraph 4, Amendments, raising a point relative to the words "the aforesaid three-month period immediately after such publication," stating the language might seem obscure to some people. Mr. Stanger suggested that the word "immediately" be changed to "next succeeding" such publication. After further discussion, it was the feeling of a majority of the Committee that paragraph 4, Article IX, remain as is.

Mr. Taylor then called the Committee's attention to paragraph 3, Article IX, suggesting a time limit be put in to force publication within a certain period after an amendment is adopted. After further discussion, Mr. Pursel made a motion that paragraphs 3 and 4, Article IX, Amendments, in the final draft, remain as previously adopted. Mr. Park seconded the motion and, on roll call, it was adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger—10

NAYS: Taylor—1

At this time the Chairman stated he wished to advise the Committee that Mr. Van Alstyne had told him that the Committee on Executive, Militia and Civil Officers is considering the question of civil officers, and has a clause before it which embodies a permissive right to the State and its political subdivisions to adopt the principle of civil service, if they care to do so. The Chairman also stated that he had been in touch with Mr. Read of the Taxation Committee, and that that Committee is incorporating in its report exemptions for veterans, including some references to disabled veterans. He then stated that he would turn the matter over to Mr. Glass for discussion, since Mr. Glass had made a motion, which was left open for discussion, to grant preferences and exemptions to honorably discharged war veterans.

The Chairman further stated that it was his understanding that the civil service clause does not make it mandatory, as the Committee had been requested to make it today by Mr. Markley and his associates.

Mr. Glass moved that the Committee leave the matter regarding exemptions and preferences to the Executive, Militia and Civil Officers Committee and the Taxation Committee, in whose jurisdiction they more rightfully belong. Mr. Stanger seconded the motion

and, on roll call, it was adopted by unanimous vote.

Mr. Park at this time invited the Committee's attention to paragraph 4, Article I, Rights and Privileges. Mr. Glass moved that the comma be eliminated after the word "sect," in paragraph 4. Mrs. Katzenbach seconded the motion.

Mr. Glass moved that paragraph 5, Article I, in the final draft read as follows:

"5. No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin."

Mrs. Katzenbach second the motion and, on roll call, it was adopted by unanimous vote.

The Chairman stated that that cleared all points of his letter of last week to committee members, and called the Committee's attention to the "equal rights for women" question, on which the motion to discard the question was previously lost.

Discussion followed by the committee members of the Chairman's submitted paragraph which reads as follows:

"The words 'person,' 'persons,' or 'people' as used in this Constitution shall be construed to mean and to apply alike to men and women, including their equal responsibility before the law except as otherwise expressly provided by law; provided that nothing herein contained shall deny females any preference or preferences they may have or may receive by law because of sex."

After discussion, Mr. Stanger made a motion that the word "sex" be inserted between the words "of" and "religious" in paragraph 5, Article I, as the way to best resolve the matter. Mr. Pursel seconded the motion. Further discussion followed Mr. Stanger's motion. Mrs. Katzenbach stated that she thought the women themselves would be quite indignant at the use of the word "sex."

The Chairman then read a proposal for the United Nations Charter submitted by the United States:

"There shall be equal protection before the law in the enjoyment of the rights enumerated in this Bill of Rights, without distinction as to race, sex, language or religion."

Mr. Ferry stated that there are two or three schools of thought among the women, and he further stated that while he felt the Chairman had spent a lot of time and work on this paragraph for the Committee, all the women would not feel they were getting just what they wanted in the Chairman's suggested draft due to the clash of viewpoints. Mr. Glass stated he approved of the Chairman's draft.

Mr. Stanger called for a question on his motion that the word "sex" be added to paragraph 5, and, on roll call, the following vote was recorded:

AYES: Carey, Ferry, Pursel, Schenk, Stanger, Taylor—6

NAYS: Delaney, Glass, Katzenbach, Park, Randolph—5

Mr. Delaney stated that his reason for voting "nay" was that he saw no necessity for adding the word "sex" and that women are fully protected in the provisions incorporated in paragraph 5 by the word "persons." Mr. Glass stated that he felt that the word "sex" did not belong in paragraph 5.

The Chairman, at the suggestion of the Committee, called for a re-call on the vote and, on roll call, the following vote was recorded:

AYES: Ferry, Pursel, Schenk, Stanger, Taylor—5

NAYS: Carey, Delaney, Glass, Katzenbach, Park, Randolph—6

The motion was, therefore, declared lost.

Mr. Park made a motion that the Committee not incorporate into the final draft any specific references to women that had not already been included. Mr. Pursel seconded the motion and, on roll call, the following vote was recorded:

AYES: Delaney, Katzenbach, Park, Pursel—4

NAYS: Carey, Ferry, Glass, Randolph, Schenk, Stanger, Taylor—7

The motion was, therefore, declared lost.

Mr. Taylor made a motion that the Committee accept the principle found in the wording of the brief submitted by the New Jersey Federation of Business and Professional Women's Clubs, Inc.¹ which, as rearranged by the Committee, reads as follows:

"Wherever in this Constitution the term 'man or men,' 'person or persons,' 'people or peoples,' shall be used, the same shall be deemed and taken to include both sexes."

Mr. Pursel seconded the motion.

Mrs. Katzenbach then read a letter from Miss Susan Schwemer, Acting President of the Consumers' League.²

Mr. Carey suggested the following draft prepared by him as a substitute for the adopted clause:

"Men and women are granted the equality of rights in all things in this Constitution; but nothing herein stated shall take from women any special rights accorded them by legislation."

The Chairman at this time read to the Committee the proposal submitted by another interested group.

Mr. Taylor called for a question on his motion and, on roll call by the Chairman, the following vote was adopted:

AYES: Carey, Ferry, Glass, Pursel, Randolph, Schenk, Stanger, Taylor—8

NAYS: Delaney, Katzenbach, Park—3

The Chairman stated that for the time being this paragraph would be placed as paragraph 4, Article VIII, General Provisions, if the Committee approved such classification—and such classification was approved.

Mrs. Katzenbach at this time referred the Committee's attention

¹ This memorandum appears in the Appendix to these Committee Proceedings.

² The letter appears in the Appendix to these Committee Proceedings.

to Mr. Winston Paul's proposal on amending the Constitution, and further referred to the minutes of the Committee on page C1-4-13.¹ Mrs. Katzenbach further stated that she felt that the Committee had never had a formal discussion regarding Mr. Paul's statements. Other committee members disagreed.

Mr. Carey stated he reserved the right to file a minority report on Article I, paragraph 19, dealing with collective bargaining, and on Article IX, the amending clause—which reservation was accepted and approved by the Committee. Mr. Carey further stated that in his opinion “the saddest thing to do is to make it easier to amend our Constitution than it is today, except in the one respect of providing that the election shall be held at a general election instead of a special election.” He stated that he felt the philosophy of the amendment process in the 1844 Constitution was right, and to keep it would be a step to preserve our form of government.

The Chairman read from a brief submitted by the American Federation of Labor, supporting the three-fifths vote on amendments,² and also read excerpts from Mr. Paul's statements on his re-appearance before the Committee endorsing a four-sevenths vote in the Senate to a three-fourths vote in the Assembly on amendments. The Chairman stated he did so to clarify and support the majority committee vote requiring more than a majority vote in each of the two houses of the Legislature on amendments.

Mr. Glass made a motion that the amending clause remain as previously adopted. Mr. Pursel seconded the motion and, on roll call, it was adopted by the following vote:

AYES: Ferry, Glass, Park, Pursel, Schenk, Stanger—6

NAYS: Carey, Delaney, Katzenbach, Randolph, Taylor—5

Mr. Stanger made a motion that the previous motion be expunged, because the matter had been previously passed on finally, except for minor changes in language. Mrs. Katzenbach seconded the motion, which was adopted unanimously.

Mrs. Katzenbach at this time brought up the subject of public hearings. She stated that as she understood it, the Committee had decided previously that there were to be no more public hearings. The Chairman then stated that the Committee had voted at the last meeting that it would no have any more hearings in any case. Mrs. Katzenbach requested that she would like to have her vote changed to “Nay” on the question of further public hearings, which was recorded as “Aye” on the minutes, on page C1-10-20.³ The change was accepted by the Committee.

¹ This refers to the page of the mimeographed minutes, as originally prepared. The proposal appears at the close of Mr. Paul's remarks, in the minutes of Tuesday, July 22, 1947, morning session (page 178).

² The A. F. of L. memorandum appears in the Appendix to these Committee Proceedings.

³ This refers to the page of the mimeographed minutes, as originally prepared. The vote was taken at the close of the afternoon session of Wednesday, July 23, 1947 (page 199).

On question by the Chairman, the majority of the committee members stated that they did not want another public hearing on the Committee's recommendation to the Convention.

Mr. Carey brought up the matter of the speech made by Mr. Dean of the Communist Party, at the July 8 public hearing, and made a motion that the whole speech be expunged from the record of the Committee. Mr. Randolph seconded the motion. The Chairman called for remarks from the committee members, and Mr. Ferry stated that in his opinion the Committee did not have the right to expunge from the records any material received at a public hearing, as the witnesses appeared in answer to an invitation to come to public hearing and be heard.

On roll call by the Chairman on Mr. Carey's motion, the following vote was recorded:

AYES: Carey, Randolph—2

NAYS: Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Schenk, Stanger, Taylor—9

The motion was, therefore, declared lost.

The Chairman stated that he would try to have the entire new draft retyped for the committee members, so it would be ready for the Committee's attention on Wednesday, July 30.

It was regularly moved, seconded and carried that the meeting adjourn until Wednesday, July 30, 1947 at 10:00 A. M.

(The session adjourned at 4:20 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Wednesday, July 30, 1947

(The session began at 10:00 A. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

The twelfth meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions was held in Room No. 5 of the Music Building.

The Chairman distributed to the committee members a new proposed draft of the final recommendations, the Committee Proposal, of the Committee, and a tentative draft of the Committee Report prepared by him to accompany the Committee Proposal.

Mr. Park moved that the Committee consider the Proposal by comparing it Article by Article with the 1844 Constitution, with two members also following and checking the Committee Report at the same time. The motion was seconded by Mr. Stanger and, on roll call, adopted by unanimous vote. During the comparison, Mr. Ferry made a motion that paragraph 4 of Article IX, Amendments, read as follows:

“4. Such proposed amendment or amendments shall then be submitted to the people at the next general election in the form provided by the Legislature.”

The motion was seconded by Mr. Park and, on roll call, adopted by the following vote:

AYES: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Taylor—10

NAYS: Stanger—1

After other corrections in final draft of the recommendations of the Committee, with full comparison of the Committee Proposal with the 1844 Constitution, Mr. Park moved that it be the unanimous consent of the members of the Committee that they sign the report of the deliberations and recommendations of the Committee, known as the Committee Proposal, and also the Committee Report, as corrected, accompanying the Proposal. The motion was seconded by Mr. Glass and, on roll call, it was adopted by unanimous vote.

Mr. Park then moved that the correction sheets prepared by the Chairman be attached to the record of the public hearings held on July 8 and 9, 1947, and be approved as submitted; also the minutes of the seventh, eighth, ninth and tenth meetings. The motion was seconded by Mr. Delaney and, on roll call, adopted by unanimous vote.

Mr. Park moved that consideration of the approval of the minutes of the eleventh and twelfth meetings be at a special meeting of the Committee to be held on Tuesday, August 5, 1947, at some appropriate time. The motion was seconded by Mr. Glass and, on roll call, adopted by unanimous vote.

Mr. Carey at this time made a statement that he intended to file a minority report because he was not in accord with the findings of the Committee on two important matters. He then elaborated and stated that the amending process should not be eased, as in the Committee Proposal, and the sentence in paragraph 19, Article I, pertaining to labor should not be adopted. He would recommend the amending process of the present Constitution with one change, namely, having the vote at general elections.

Mr. Stanger stated that he concurred with Mr. Carey on the matter of amendments only, and Mr. Delaney stated that he was in accord with Mr. Carey on the matter of collective bargaining only.

The Chairman inquired if there was any other business to come before the Committee. There being no further business, Mr. Ferry made a motion that the Committee give a rising vote of thanks to the Chairman, John F. Schenk, for the capable, courteous and magnificent manner in which he had handled the meetings and related work of the Committee. The motion was seconded by Mr. Carey and adopted by unanimous vote.

Mr. Carey moved that the Committee give a vote of thanks to Lawrence N. Park, Secretary, for the excellent help he had rendered to the Committee. The motion was seconded by Mr. Ferry and adopted by unanimous vote.

Mr. Ferry made a motion that the Committee give a vote of thanks to Beatrice A. Hunt and Rose C. Valsac for their diligent and efficient help and service to the Committee in their capacity as secretaries to the Committee. The motion was seconded by Mr. Stanger and adopted by unanimous vote.

Mr. Taylor made a motion that the Committee recommend that the secretaries be paid for the large amount of overtime work done by them. The motion was seconded by Mr. Stanger and adopted by unanimous vote.

It was regularly moved, seconded and carried that the meeting adjourn until Tuesday, August 5, 1947.

(The session adjourned at 12:00 noon)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday, August 5, 1947

(Morning session)

(The session began at 11:00 A. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

CHAIRMAN JOHN F. SCHENK: The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions will please come to order.

I might say the Committee heard very many witnesses and we worked right up to the deadline finding our area of agreement and getting our report ready on our Proposal. There is now an opportunity for interested citizens to appear and be heard on it. At this time we are going to call on our first witness, Mr. Carl Holderman.

Mr. Holderman, we thought we would use either one of the lecterns. Will that be all right, sir? Mr. Holderman is of the C.I.O., and he will mention some other related material and questions of other speakers, I believe, as well.

MR. CARL HOLDERMAN: Mr. Chairman and members of the Committee:

I am appearing here today in behalf of the State Industrial Union Council, C.I.O., and I have been asked to represent the Committee on Constitutional Revision on several matters that are before the Committee on Rights and Privileges. May I say in the beginning that I know the Committee has toiled long and hard on the report that is being proposed to the Convention, and I appreciate the opportunity that you gave us to testify on a previous occasion and this opportunity to testify concerning some of the provisions of the report that will be submitted to the Convention. I understand that the report will be in two parts, a majority report and a minority report. I have only had the privilege of scanning the report very briefly this morning and so I may touch upon one or two matters that may not be in the report or of which we have had no cause for criticism.

I'd like to touch upon three specific parts of the report that is being submitted to the Convention: the clause on labor rights, the clause on minority rights and the clause on the amending process. These are the three provisions that are being considered by the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, and in which the C.I.O. has a particular concern. I should like to answer some of the statements that have been made concerning these three provisions in the report, and to add some testimony in rebuttal to those parts of the report that deal with these particular questions.

It has been said that the labor rights provision—by which the employees of private employers shall be guaranteed the right to organize and bargain collectively and public employees shall be guaranteed the right to organize and present grievances through their chosen representatives, which I believe is the language of the report,—it has been said that this type of legislation is class legislation. I want to disagree with that partially and say that this is a guarantee, a fundamental guarantee, that affects our whole economic system; that the prosperity of our entire country is based upon the spending power of the great mass of workers in America, and that there is no substitute for this spending power. Our private enterprise system has been a history of exploitation of workers. We are now living in an enlightened age when we believe that government, recognizing as it should the economic causes for depressions, must give such guarantees so that workers through their chosen instrumentality can protect themselves by banding together and bargaining for wages and conditions of work.

On the other hand, to those who say that this is class legislation and therefore should have no guarantee in the Constitution, may I point out that there have been other groups who have been granted special privileges under the Constitution. Let me call your attention to the race tracks, for example, who have been able to incorporate in the Constitution a provision which sets up a special consideration for them to conduct racing in the State of New Jersey. This, too, could be called class legislation. The Constitution, as I understand the Constitution, is established for the very purpose of protecting groups who need protection against stronger elements in the community and against official persecution—something that labor has been subject to for many, many years.

The thought has been expressed, in considering this particular provision, that there is no widespread demand for this protection of labor in the Constitution; that the demand comes solely from the organized labor movement in this State. To this I take exception by calling attention to the fact that there are 24 state-wide organizations, members of the New Jersey Committee for Constitutional Re-

vision and members of the Joint Committee on Constitutional Bill of Rights who have supported the demand for labor guarantees in the Constitution. I would just like to read to the Committee a list of some of these organizations. The New Jersey Committee for Constitutional Revision includes the following groups, in addition to the State C.I.O.: the State Federation of Labor, New Jersey State Federation of Women's Clubs, New Jersey Association of Real Estate Boards, National Council of Jewish Women, New Jersey Taxpayers' Association, Consumers' League of New Jersey, American Association of University Women, New Jersey State Federation of Colored Women's Clubs, New Jersey League of Women Voters, and the New Jersey League of Women Shoppers.

The Joint Committee on Constitutional Bill of Rights, which also subscribed to that, has the support of the following organizations: the American Jewish Committee, American Jewish Congress, B'nai B'rith, Camden County Ministerial Association, State C.I.O., State A.F. of L., Jewish War Veterans, League of Women Shoppers, National Association for the Advancement of Colored People, New Jersey Independent Citizen's League, Industrial Union of Marine and Shipbuilding Workers, National Council of Jewish Women, New Jersey Urban League, Farmers' Union, State Urban Colored Population Commission, and the Newark Teachers' Association.

And so we find here a substantial group of organizations representing hundreds of thousands of members in the State of New Jersey who fully support this provision for the guarantee of the right to organize and bargain collectively. It has been said that the United States Constitution doesn't have such a provision in it and that only one state has it. While I agree that the Federal Constitution, which was adopted in 1789 before the New Jersey Constitution was adopted and before the need for protection of labor in an industrial society arose, has none, there are two states that now contain a provision in their constitutions guaranteeing the right to organize and bargain collectively. Those states are New York and Missouri, the only two states in the United States who have held constitutional conventions since 1919. I want to add to that that there is a considerable agitation in the labor movement and elsewhere to have incorporated in the Federal Constitution a similar right, and no doubt the time will come in the very near future when a proposal of that sort, a proposal for an amendment of the Federal Constitution, will be made.

While the federal law protects workers in interstate industry, there is an absence of any such provision in New Jersey as far as intrastate workers are concerned. The absence of any such law, and the absence of such a provision in the Constitution itself, has been extremely harmful to the laborers' interests. Oftentimes official

agencies of government, law enforcement agencies and others, have been used as an instrument to destroy unions or to weaken their collective bargaining power. Chancery courts have been particularly vicious in this respect, having used the injunction weapon for decades in the interest of employers to weaken collective bargaining rights, to weaken unions and thereby weaken the collective bargaining rights; and on almost every occasion when decisions have been handed down, up to the last decade, the Chancery courts have handed down decisions that have been harmful, extremely harmful, to the labor movement, and have been used to suppress the desires of workers to organize and bargain collectively.

I would like to conclude that part, Mr. Chairman, concerning the rights of labor to organize and bargain collectively, by adding just this suggestion: We are very much disturbed at the distinction that has been made between the employees of private employers and the employees of the State, the municipality and the county—public employees. We cannot imagine by what stretch of the imagination public employees should be considered as second-class citizens. The right to organize and bargain collectively on wages and hours of work ought to be as fundamental a right to a public employee as it is for private employees. Certainly the wages that they earn and the hours that they work have just as serious an effect upon our economy as the wages and hours of work of private employees. While the provision guaranteeing the right to organize and present grievances through their accredited representatives is perhaps some recognition of that right, I cannot understand why the Committee's proposal stopped short of the guarantee of the right to bargain collectively. Private industry has seen fit to set up special departments within the structure of their organizations to deal with this labor relations problem, and I can see no conceivable reason why the State itself should not set up a similar agency to deal with the collective bargaining process for the State or for the county or municipality, as the case may be.

I should like to say a few words, Mr. Chairman, on the proposal that the Committee is making to protect persons from discrimination because of religion, race, color, national origin, or ancestry. While I recognize that this clause is an improvement over the present provision in the Constitution, I'm very much concerned at the Committee's failure to incorporate, to spell out in exact language, some guarantees of social rights that are generally ignored in official circles at the present time. While we have a law which recognizes the principle that workers, regardless of race, color, creed, or national origin, must have equal opportunities in employment, there is no such guarantee as far as social conditions are concerned. As a consequence, minority groups are often seriously handicapped

in meeting some of their everyday economic problems. Take the problem of housing, for example. Minority groups are often segregated because of the discrimination that is practiced against them in housing. As a result, they are exploited by the real estate interests because of the limited field in which they are able to get adequate housing or, too often, inadequate housing. It is surprising to note that the rentals in such areas of segregation are proportionately far above the rentals for much better type housing in other localities. We believe that in their interest the Committee should give reconsideration to the clause that was proposed by the Joint Committee on Constitutional Bill of Rights and spell out in more exact language the kind of discrimination that is meant, so that the courts can adequately interpret the rights of these minority groups when called upon to do so in the enforcement of the laws the Legislature might pass.

Now, I would like to say just a few words about the amendment process. This amendment process is one of the most vital provisions in the Constitution. We have lived for 103 years under a Constitution that was written for a horse-and-buggy age, a Constitution that was written for the government of an agricultural State. There have been at least eight different attempts to have a convention such as this held in the State of New Jersey to modernize the Constitution—attempts on different occasions since about 1860. On every occasion the Legislature has thwarted any attempt to have a constitutional convention so that the people would be able to express themselves adequately on their needs. The Legislature has been able to thwart it because of the restricted amendment process in the present Constitution. That process makes it almost impossible to secure a constitutional convention or even to secure an amendment to the Constitution.

The Committee, I know, has struggled with this problem. I know that it is one of the most controversial issues in this Convention. The Committee has come forth with a proposal which it considers an improvement upon the present provisions of the Constitution. I question whether or not it is a practical improvement. While on paper it appears as though the provision for a three-fifths vote of each House and signature of the Governor is sufficient for an amendment to the Constitution, in actual effect it means that a small majority of the voters of the State of New Jersey—rather, members of the Legislature representing a small majority of the voters—can prevent an amendment to the Constitution and prevent a constitutional convention just as much under the new proposal as they could under the present proposal in the Constitution. The three-fifths rule means that nine members of the State Senate, representing counties with only 10.6 per cent of the State's population, can

prevent the people from voting on an amendment favored by 60 Assemblymen and 12 Senators representing 89.4 per cent of the population, so that 10 per cent of the population in this State can prevent an amendment to the Constitution that might be badly needed in the face of the changing times of this day and age and that the people might desire very much.

It has been said that there is no great public demand for this. I challenge that statement, because these same organizations which I listed before as being in favor of labor's bill of rights under a State Constitution are in thorough support of a liberalized amendment process that will permit amendments periodically to the Constitution and will provide an opportunity for the people of New Jersey to say on regular occasions that a constitutional convention should be held.

There have been only three amendments adopted in 103 years—no, I think it's four amendments in 103 years. Sixty-four times during that period a proposed amendment has been passed in one session of the Legislature and died the following year, without the public voting upon it. It has been said that the method recommended by the Committee would make it as easy to amend the Constitution as it is to pass an amendment to any law in the Legislature. I'm going to call your attention to the fact that such is not the case. In states that have a much easier amending process we find that the record says otherwise.

I have here a letter from one of the professors at the University of Michigan, who is an authority and who says this (*reading*):

"As to the record of the Constitution of 1909, there have been two votes under the automatic provision for a Constitutional Convention."

This, incidentally, is an automatic provision to submit the question to the voters of the State of Michigan. In 1926 the people rejected a call for a convention by a vote of yes, 119,000; no, 285,000. Again in 1942 the people rejected the call for a convention by a vote of yes, 408,000; no, 468,000. In the State of Iowa, which also has a provision for a vote on a constitutional convention, we find the same has occurred. In 1870, 1880, 1890, 1900, 1910, 1930, and 1940 a majority of those who voted on the question opposed the calling of the convention. In Maryland we have the same situation. While I don't have the vote and the dates on which the question was submitted to the people, there has been a substantial lapse of time since there has been a constitutional convention in the State of Maryland, and certainly the intervals between the constitutional conventions refute the charge that constitutional conventions would be as regular as State Legislatures if the amendment process was eased any more.

Certainly one of the most important provisions in this clause on

the amendment process is the clause for a periodic revision. It has been said by one of its critics that this would lead to mob rule. I say that we have nothing to fear in placing greater power in the hands of the people from whom the power of the Legislature is supposed to be derived. As far as we are concerned, we would prefer "mob rule" to "rob rule" stolen from the people by people who wish to exploit the many. When a process is set up in the Constitution which puts final authority in the hands of the Legislature to determine on the basis of a three-fifths provision that there shall or shall not be an amendment to the Constitution, then I say that we are being afraid of our own people—people who, after all, in a democracy ought to have the right to amend and change their Constitution or throw it out completely and rewrite it periodically if they see fit.

So I hope, Mr. Chairman, that your Committee will consider the criticisms that I have made today, give your attention to the proposals that have previously been made by a number of organizations, and give further consideration to all three of these questions: labor's bill of rights to organize and bargain collectively, with some provision for the right to bargain collectively on the part of public employees; the spelling out of the anti-discrimination provision so as to protect the social rights of minorities, and making the amendment process a better, a more liberal process by which amendments can be made to the Constitution, and certainly, by all means, an opportunity for the people periodically to vote on whether there should be a constitutional convention.

I just want to add in conclusion, Mr. Chairman—and this is repetitious; I am repeating what I said at the last hearing—these are the three major questions by which the C.I.O. determined its support or non-support of the proposal that was made in 1944. While we have a democratic organization and the final decision will be made by a democratic process in the C.I.O., I'm sure that these three provisions will be the major provisions that will determine the attitude of the C.I.O. towards the proposal that will come from this Convention. I feel reasonably certain that the proposal, at least the proposal on the amendment process, which is a repetition of the proposal made in 1944, will not receive favorable consideration because of its insufficiency in the present report. So I hope that you will give further consideration to it, Mr. Chairman.

May I suggest, Mr. Chairman, that one of the members of our organization has a statement on public employees, a very short one, and I'd like to have him read that statement. And I would also like to ask this: We have a number of persons here from the C.I.O. who would like to testify. While I know your time is limited, I want to refute the charge that there is no widespread demand, if the Committee is willing to accept their statements of support for my testi-

mony. To refute that charge that there is no widespread demand, I'll simply read their names and whom they represent, rather than have them testify singly. Will that be satisfactory

CHAIRMAN: Yes, Mr. Holderman. Will you proceed with that reading?

MR. HOLDERMAN: For the purposes of the record, then, I would like to say that there are the following people here from various part of the State who told me and who voted in their respective localities in full support of the position that we have taken: Marguerite H. McCollum, who is president of the Union County C.I.O. Council, representing 27 locals and 25,000 members; there is Ernest Thompson from the Hudson County C.I.O. Council, representing 35 locals and 30,000 members in that locality; Benjamin Maiatico from the South Jersey Industrial Union Council, which takes in a number of counties around Camden, with 46 locals and 25,000 members; Morton Bloom of Greater Newark C.I.O. Council, representing 60,000 members and an indeterminate number of local unions; Marie Alger of the Passaic County Industrial Union Council, 30,000 members and I think they have about 40 local unions in that locality.

That will conclude my testimony. May I ask, therefore, permission for the representative of the Public Workers, C.I.O., to read a short statement?

CHAIRMAN: Yes, we'll hear him next. . . . Just a minute, Mr. Holderman. Do any committee members have any questions?

(Silence)

CHAIRMAN: I guess not, sir. Thank you.

MR. ANTHONY VITRONE: Mr. Anthony Vitrone, representative of the United Public Workers of the State of New Jersey. I am rising in support of the statements the president of the State C.I.O., Carl Holderman, just made, and I'd like to place this short statement into the record so that it may indicate to the Committee the gravity that exists in dealing with the public employees of the State and its political subdivisions. *(Reading)*:

"The right of government workers to organize into labor organizations of their own choosing must be written into the Constitution. More than that, specific guarantees must be provided that obligate the public officials of the State and the political subdivisions to bargain with such organizations. Of course, it should be understood that the type of collective bargaining that is applicable to industry cannot be used for government workers. The problems of government, the laws and limitations placed on the State and its political subdivisions, must all be taken into consideration. However, all this and more of these limitations do not negate the plausibility of applying the principles of collective bargaining to the State and its employees.

One of the fundamental principles of collective bargaining is that both labor and management sit down together in an attempt to mediate any differences that may arise. The application of this principle to the State, its political subdivisions and government employees must and should be

written into the Constitution. Without that principle, government workers are relegated to second-class citizenship and must depend on the whims of the authorities in control as to any say in the conditions of employment. Let me cite a few concrete cases.

In Union County the park workers have organized into a C.I.O. local union affiliated with the United Public Workers. From the outset, the park commission has interfered with the right of these employees to belong to a union. When organization was complete an attempt was made by the union and its representatives to meet with the commission for a discussion of wages prior to the adoption of its budget. Letters from the union went without reply. The commission refused to meet with the union and its representatives. Instead, the secretary of the commission called in a committee of the men, said he was not speaking to them as a union committee, turned down their proposal, and then said that it would be better for them without a union. A situation of this sort could have led to a breakdown of the day-to-day operations of the park commission. Fortunately, the local union agreed to go along with the minimum proposal of the commission with regard to wages and other conditions.

In Camden County a good percentage of the workers belong to the United Public Workers and have been members for years. During all these years our union has successfully established harmonious relationships with the freeholders. However, since the last election, as a result of the change in the political character of the board of freeholders, this relationship has been done away with. Similar circumstances exist in Atlantic City with the school teachers, where our union has borne the brunt of an attack by an anti-union school superintendent.

Because there is no actual collective bargaining, our employees in the Employment Service have been unable to bring to a conclusion many of the problems that arose due to the loan of the agency to the Federal Government. Low wages, lack of examinations, improper classifications and rapid turnover of employees have led to serious harm to the agency's operations. In this situation thousands of unemployed workers of the State of New Jersey have suffered because of the inefficient operation of the agency and a terrific backlog of claims for these unemployed workers.

In contrast to such a situation, where we have a good working relationship with government agencies and collective bargaining of the sort practiced, conditions have been stabilized, employees satisfied and everyone has benefited, including the taxpayer. Peaceful labor industrial relations is a goal we all seek. Strikes and disturbances in the labor relations field do not occur purely for the sake of creating trouble but because the orderly process of collective bargaining has broken down. This objective can be achieved. In this State it is much easier if the State and its political subdivisions would point the way by holding up as an example its own record of labor relations. It is for these reasons that the right to bargain collectively for public employees must be placed into the Constitution."

CHAIRMAN: Do any members of the Committee have any questions?

(Silence)

CHAIRMAN: We have another citizen who wishes to be heard on the same subject—Mr. Gibson LeRoy, Executive Secretary, State, County and Municipal Workers, not connected with the C.I.O. I believe it is an independent union.

MR. GIBSON LEROY: Thank you, Mr. Chairman. I appeared on behalf of our union, and I should like to say for the record again, as I did at that hearing, that the phrase that we have adopted, or used, "not connected with the C.I.O.," does not mean anti-C.I.O. or anti-A.F. of L., or anything of the sort. It was a little family squab-

ble, which does not affect our position in connection with organized labor. I think the statements made by Mr. Holderman and by Mr. Vitrone have been good ones and should be adhered to as much as possible in the record.

The results of the hearing which was held on July 1 have, I presume, been placed before this Committee. At that time I appeared before the Executive Committee. I want first of all to compliment the Committee for having added the right to belong to a union, and the right to present grievances to the public employers. I think that it is a fine step forward—certainly a better step forward than was made, as I recall, in the previous attempt at revising the Constitution wherein the only statement made about public employees was a very negative one which was bound to create a great deal of additional trouble, and that was a statement against the right to strike.

I'd like to say that I think a good deal of confusion exists in the minds of public employees, employers, and the public generally in the State of New Jersey, as elsewhere, over the question of collective bargaining, the right to belong to a union while in public employ, and the right to strike. Unfortunately, the forces who have, for their own political reasons, been against public employees belonging to unions have used the artificial argument about the right to strike in an attempt to block any progressive approach to the problem. I think that strikes which have occurred in public employ—I have been involved in some of them; I know their background and their history in greatest detail—I think that they have been caused because there is no guarantee in the Constitution that the employers must deal reasonably, as reasonable people, with their organized employees.

I think that if we are going to get an answer to this problem we ought to go to a good authority. I know of no better authority than, for example, the National Civil Service League, and a report which they have gotten out, which was made up and formed by such men as Dr. William S. Carpenter, President of the New Jersey Civil Service Commission; Mr. Sterling D. Spero, Associate Professor of Public Administration in New York University; Mr. H. Eliot Kaplan, who is Executive Secretary of the National Civil Service League. There are other names attached to it, such as Ex-Governor Charles Edison, Mr. B. H. Faulkner, Secretary and Treasurer of the Seaboard Oil Company and Director of Public Safety in Montclair, and many other names which are, I believe, before the Committee in the form of this report. These are men in our society who are not labor men. They are probably neither *pro-* nor *anti-* organized labor. They are reasonable men who have sat down in a studious way, in a statesmanlike way, and pounded out a formula for public employees and their relationship with organizations such as labor unions.

I should like briefly to read to you from page 14, on the question of collective bargaining, and then I would like to add a few words to the question (*reading*):

"While normally a public agency may negotiate to the point of reaching an agreement with the group involved, the terms are to be embodied not in a binding joint contract but in a memorandum freely accepted, setting forth policies and programs the administrator alone can carry forward. It is collective negotiations."

Further it says,

"An administrator should profit fully from the guidance which he may obtain from collective consultation with his employees or their representatives with respect to conditions of employment and the good of the service. An informal negotiation, understanding, or contract can thus result, and this cooperative arrangement may be kept in good faith without it being binding on the legislature or the administrator."

I think that a great deal of confusion exists on this question of collective bargaining of public employees, and I know of no better way here to try to dispel some of this confusion than to limit myself in the remarks that I make to an urgent request that this Committee, which is to decide finally on the draft to be presented to the Convention, ask me whatever questions may be in their minds concerning the question of collective bargaining in public employ, since the other two steps—the right to belong to a union and the right to have grievances heard—have already, in effect, been accepted by the Committee. I urgently request that the Committee ask whatever questions there are on their minds on this question, and I assure you gentlemen that no question will embarrass me, because I have lived with this thing for some 15 to 20 years, first as a public employee in the City of Newark and then connected with the union.

I want briefly to say a word about the proposals which we ourselves presented at the previous hearing, July 1 of this year. We presented a brief the proposals of which were as follows: "In order to remedy the harm being done by the Wilentz opinion—" and I might add editorially that the Wilentz opinion was openly and completely attacked by the following edition of the *New Jersey Law Journal*, which is as good an authority on law in New Jersey as I think we have (*reading*):

"In order to remedy the harm being done by the Wilentz opinion and to bring to the public employees of New Jersey the same guarantee of fundamental rights long extended to workers in private industry, we respectfully urge the delegates to the New Jersey Constitution Revision Convention to write into the new document the following provisions here set down in the wording of the layman. (1) The right of all public employees to belong to a union of their own free choice shall not be denied."

That, I understand, has been written into the proposed document. (*Continues reading*):

"(2) The right of the State of New Jersey, counties, municipalities, school districts, and any joint boards or intrastate commission such as the Passaic Valley Water Commission, to negotiate with any employee organizations within the limits set forth by the Civil Service Law."

I hope, gentlemen, you will note that addition, "shall not be denied." I mention particularly here the Passaic Valley Water Commission, because they, as in other cases throughout the State, have hidden behind the Wilentz opinion, which is, in itself, an unsound legal document. (*Reading*):

"(3) The Civil Service Commission and/or the Governor shall be empowered to investigate and submit recommendations in matters involving a labor dispute between any group of public employees and the employing agency, be it the State of New Jersey, county, municipality, school district, or intrastate commission, such as the Passaic Valley Water Commission."

We ask this thing because we feel that the opening statements made by the Governor himself before this Convention would then be served. I quote from his opening address, in which Governor Alfred E. Driscoll said (*reading*):

"This kind of environment makes it all the more important that the organic laws under which our State may live for the next century be confined to the establishment of sound structure, to the definition of official responsibility and authority, to the assurance of the fundamental rights and liberties of all the people. To do less is to fail in your trust; to seek to do more is to impose upon the future."

To which we have added that the public employees in the State of New Jersey are an important part of all the people. They feel justified in asking for any fundamental rights and liberties that are enjoyed by other people. As regards their relations with public management in New Jersey today, they are not guaranteed those rights. Consequently, they often find themselves denied those rights. Surely, it is within the scope of the Constitution of the State of New Jersey to guarantee those rights.

I'd like to repeat that if there are any questions on this collective bargaining problem, I should be very glad to answer them within my ability.

CHAIRMAN: Do any members of the Committee have any questions at this time?

(*Silence*)

CHAIRMAN: Thank you, sir. . . . Mrs. Frank Fobert.

MRS. FRANK FOBERT: Mrs. Frank Fobert, and I speak on behalf of the New Jersey League of Women Voters. We realize that the Committee has worked long and hard on this and it is going to have more hard work to do. We appreciate it very much. We have a number of commendations to make and also some requests that a few changes be made in the work which you have done. For brevity, I'll go through this page by page and note the few articles in which we are particularly interested.

On page 11, in paragraph 1 [of Article I] you use the word "persons" rather than "men," and I think that is a very good change. The League was very much, and is very much, against the equal rights amendment, but we feel that using the word "persons" merely

makes clear what the courts have always interpreted "men" to mean—as meaning both men and women.

In paragraph 5 we feel that the anti-discrimination section is an advance over what we already have in the Constitution.

On page 12, paragraph 10, we are delighted that you left out justices of the peace. They have no place in a Constitution.

One page 13, paragraph 17, we feel that to say "without just compensation first made to the owners," for the State taking property for state use is a mistake. Perhaps we are wrong, but we don't think that we are. We suggested to you that you allow the State to take possession of property pending the decision in the courts. We don't feel that the State should be held up by legal delays, as it has been in many cases. In any case, the State or the individual concerned with the property abides by what the courts say, and it won't make any difference that we can see to have them paid before they let the State make use of the property.

Now, in paragraph 19, the right of workers to bargain collectively. To me, and to the League, that shows considerably, I think, the whole idea of bargaining collectively and the right to strike. I know that when I testified previously the committee members were terribly worried for fear that government workers, by this clause, might be given the right to strike. We feel that the right to organize and bargain collectively is a separate thing; that all the other things which are done to implement that right are done by legislation—the right of mediation, arbitration, and all that sort of thing. We feel that you make the whole thing unnecessarily wordy when you divide your public employees from your private employees. Of course, we feel the word "employee" is much more advanced than the word "labor." To most people the word "labor" signifies men who dig ditches. I don't know why it should, but it does. We think the word "employee" would be a much better word to use. As for employees being a class, well, they are a class. The very great majority of the people in this country are employees and not employers, and the Constitution and laws in a democracy are written for the great majority of the people.

Now if you get down to your next Article, on Elections and Suffrage. In paragraph 3, you still insist that people must reside in a county for five months. There is an awful lot of moving around within the State always going on. Every time a person moves, maybe even only a block, from one side of the street to the other, it may be from one county to another and they lose their right to vote. It seems to me that if somebody lives in New Jersey for a whole year, that that is all that should be necessary. The requirement of people having to live in a county for five months should not be necessary.

Then in paragraph 4, why should we not provide for absentee

voting for other persons as well as for the Army and the Navy? We can't see the justice in that.

We are delighted that in paragraph 6 you have left out the word "pauper."

Now, we go to page 16, to Amendments. We are going to speak only of an omission, and we feel it is a most important omission. There is nothing in this Article which gives the people the right to the kind of revision in which you are now engaged—the right, say, every 20 or 30 years (and the League would be perfectly willing to compromise from 20 to 30) for the people to vote, not on that we absolutely shall have a constitutional revision convention, but is it necessary? Do they wish it, or do they not wish it? We feel the papers have greatly misconstrued that statement. That does not mean that you necessarily would have one every 20 or 30 years, but there is no reason why we, who maybe in 30 years will be dead, should try to tie the hands of the people who are coming along. To my way of thinking, the young people we are training in the schools today are going to make fine, upstanding citizens and they should have the right, without any question of a doubt, to call a constitutional convention, and it should be right here in the Constitution.

The League of Women Voters was the first organization, almost ten years ago, to try to get this Constitutional Convention. If you think that it was easy to do, just look back over the last ten years and realize that it is really only because we have a Governor and a political head on the other side who were both in favor of it that we really got this Constitutional Convention. It really wasn't the vote of the people. We feel it should be the vote of the people, whether or not every 20 or 30 years they want to revise their Constitution entirely. I, for one, feel that a democracy can trust the people who are coming along. I think that is all. Thank you.

CHAIRMAN: Do you have a question, Mr. Park?

(Silence)

CHAIRMAN: I just want to clarify what I think is the Committee's thinking under the provision that "private property shall not be taken for public use without just compensation." The Committee felt that that language meant that the State could take it either before or after. In other words, just compensation could be made after a property was taken.

MRS. FOBERT: Well, there may be doubt in the minds of the people who read it. It says here "without just compensation first made to the owners." Now to me—

CHAIRMAN: No, that refers to individuals, the right of individuals taking it.

MR. LAWRENCE N. PARK: That matter gave us a great deal of trouble. The present part of our proposal is drawn from two

sources. We have eliminated the provision with regard to the taking of land for highways without compensation. Now, so far as private individuals and corporations are concerned, under the law of the land, and under our present Constitution, they must pay first. So far as the first provision is concerned, the Constitution does not prohibit the State from first taking over. As a matter of fact, there are quite a few statutes that exist—one that our friend, Pursel, will tell us about—the Delaware River Joint Bridge Commission, the Port of New York Authority, the State Highway Department—there are a number of statutes where they have the power to take first and pay later. But under the case, I think, *Re Rahway*, or some other opinion—we read them all—it appears that the law must first provide an effective means whereby the person can get compensation without untold delay.

Now, this constitutional provision, as we have drawn it, allows the Legislature, if it desires, to amend the general Eminent Domain Act, to set up the mechanics. It is now prohibited from doing it, but under the other phase of the law, if it does do that, then it must provide an adequate remedy so that the property owner won't find his property taken today and wonder for the next six or seven months when, where and how he is going to get his compensation. The Legislature can very well control it, and we, therefore, feel that since it has done it in some instances, we should not force that upon it. This doesn't prevent the Legislature from coming along now and amending the Eminent Domain Law, if it will provide a reasonable method whereby the State can have the condemnation proceedings. We don't want the situation where they take possession of the land and then you have to come in and get a *mandamus* to compel them to take some other action to condemn. Why should a man have his property taken, and the State not use it for three or four years, throw him off, and then the State decides a couple of years later that they don't want the property any more, so they throw it back to him? In the meantime he has lost the use of it for three or four months or two or three years. The State can, as a matter of fact, provide a remedy.

MRS. FOBERT: We certainly weren't against having an individual protected. We just wanted to make sure that the State, pending decision, could use it.

MR. PARK: If the Legislature wants to amend the Eminent Domain Law, it can do it. It can provide for the taking and possession first. It does it in a number of instances. Now, if the Legislature hasn't seen fit to do it in all instances, it must be that there is probably good reason why it doesn't want it done in all instances. If the Legislature desires to have it done in all cases, all it has to do is amend the Eminent Domain Law to provide a remedy whereby

the property owner can come in, if the state agency won't do anything. You have everything you want, and no one is hurt.

Now, we have the other objection. Suppose that small municipalities get on their high horse and decide to take over Blackacre. Maybe they take over Blackacre before the council finishes. Maybe they decide that there is no longer a capacity to pay for it. The property owner is out of the property. A year later he finds they don't want to take it, and what remedy does he have?

So you have everything you want here. If a Legislature wants to sit down and do nothing, I don't know that we have any power to point a machine gun at the members and tell them to do it. But there is a power to do it. No one is hurt. No one can be hurt. If there is a need to have immediate possession, you can get it providing you are willing to give, in the act of the Legislature, a reasonable judicial remedy so that the disappointed property owner can force the issue. As it is now, he has to force the issue by a long and drawn out *mandamus* proceeding to compel condemnation proceedings to be started.

CHAIRMAN: Any other questions?

(Silence)

CHAIRMAN: Thank you. . . . There are a few minutes left. We will hear James Imbrie at this time.

MR. JAMES IMBRIE: I will be brief and limit myself to ten minutes. I am speaking in behalf of the New Jersey Independent Citizens' League. I feel that it is important that the views of independent voters in the State of New Jersey for whom we speak, or in behalf of many of whom we speak, on certain matters they believe are of outstanding importance, be presented. They are not labor; they are not a minority group; they do not represent any church, either Protestant or Catholic. We feel that it is as a group of voters the fastest growing in the State of New Jersey.

I want to speak briefly on the question of amendment. It is our thought that the amendment clause proposed is altogether unsatisfactory to the League. Those of us who are aware of the political situation in New Jersey, with its machines, with its present situation as far as one of the Houses is concerned—the Senate is always Republican, and in spite of the fact that we have from time to time a change in the administration from Republican to Democrat, we have with us always a Republican Senate—we are aware of the advantages and we are aware of the disadvantages of such a situation. We say that an amendment that is dependent upon three-fifths of both Houses without any automatic right of the voting public to pass on whether or not they wish to amend the present Constitution—the Constitution which we hope may be adopted at the next election—would be an outstanding error, in our opinion. I want to say

in this connection that there will be many groups of voters who will be dissatisfied with the Constitution. I take it that these votes may reach large dimensions. If this is true, whether or not they will go along and vote for a Constitution which they think perhaps in some phases is an improvement over what we now have, will depend in large measure on whether they feel that it is possible to get an amendment without too great difficulty. Otherwise, they will not go along.

I want to speak for just a minute on the civil rights amendment. There again we feel there is a twilight zone in the proposed clauses that should definitely be clarified. This whole question of minority groups goes to the very basis of civil rights. We feel that the clauses now presented are too general. We feel that they should be made more specific and made to cover civil rights such as housing of minority groups, all the social rights that should be involved in citizenship. I feel that as I go up and down the State day and night, as I have been doing for months on end, in fact for years on end now, it is my opinion that this civil rights clause is one that is causing perhaps the single greatest interest on the part of the largest sections of the population.

In conclusion, I want to say that because I do not want to clutter up the record with repetition I will not talk to the viewpoint that has been expressed by Mr. Holderman in his able presentation, and that of other labor speakers. It is the opinion of the Independent New Jersey Citizens' League that collective bargaining and the right to organize is the fundamental civil right of all labor—of all employees as Mrs. Fobert has expressed it. We simply want to add our approbation to what Mr. Holderman and the other labor leaders have so ably expressed.

I thank you for the few minutes, Mr. Chairman.

CHAIRMAN: Any questions of Mr. Imbrie?

MR. PARK: Mr. Imbrie, I would like to ask your judgment on the amendatory process as it was submitted in the report. In your opinion is there any improvement over 1844?

MR. IMBRIE: My opinion is that it is an improvement. Yes, sir.

MR. PARK: Now, you are saying to us what we have heard time and time again. Many people are very much disappointed. Naturally, this is a committee report. It is not the action of the Convention; it is not the action of the people. The proposal represents by no means the entire agreement of the Committee. Naturally, we made compromises. We had to in order to get done, or we would be here for the next 500 years if we didn't compromise once in a while.

Your position, I take it—I don't accuse you of this—is that you indicate that many people are very much dissatisfied with the amendatory process, assuming that the Convention will take our

recommendations; and since they will be very much disappointed with it, they will vote against the whole Constitution even though there are clauses therein which will be in conformity with what they feel to be right. What do you do? You wind up with 1844. Do you want that?

MR. IMBRIE: My answer to the argument that you have made is that nothing is good that can be made better. I say that compromise on a fundamental civil right is not necessary in such a Constitutional Convention, in my opinion.

MR. PARK: Well, I am going to take off on the civil rights question. The amendatory process is the thing that the people are steamed up over down in the section where I come from. They are not very happy about what we have done; my own constituents don't like it. I would not be able to run for dog catcher down there, even with this new proposal. The situation is this,—if you admit that it is better, what is the attitude of your people going to be? You don't get it as well as you want it, so you let the whole shooting match go to pieces?

MR. IMBRIE: My thinking on that is this, sir. If there is an amendment clause that makes it possible for the voters at large in the State of New Jersey to amend the Constitution with reasonable facility, then we certainly would go along even though there are many clauses which we don't like—and I think that goes for large groups of people. That is the reason why I think so many people here today are stressing that amendment clause. It is the salvation of getting a Constitution through, in my opinion.

MR. PARK: Well, let's not labor the point, or haggle back and forth. The point I am trying to get over is this: very few of us get in life everything that we want. I don't propose to speak for the Convention, because the majority opinion of the Committee may be entirely different from the majority opinion of the Convention. Let us assume, as a matter of fact, that this proposal was adopted by the Convention without any argument. In the opinion that you have expressed, and the opinion that Mr. Holderman has expressed, and the view that Mrs. Fobert has expressed, it is not satisfactory. What are you going to do, kick the Constitution down because of that? Because if you do, you wind up with 1844, which everybody admits is not any good anyhow.

MR. IMBRIE: The answer to that is, that it seems clear that if this Constitution that is proposed is adopted, it will be a very very long time before another Convention such as this is attempted. It seems to me that the people are more and more being aroused. It is my opinion that the work that is the result of the last ten years made this possible. My opinion is that the people throughout the State are becoming more and more alive to the necessity of taking

interest in questions such as this. And I would say this,—that if it would seem necessary that the Constitution be defeated by a majority of the people, I say that I believe there would be another constitutional convention in the not distant future. I hope that that might not be necessary. That is not my attitude. At the present time I am more anxious about the amendment clause than anything else, because if the Constitution has reasonable hope of comparative facility of amendment, then I think those numbers of people who are still dissatisfied would still go along. If the clause is written without any chance of other than two-thirds vote of both Houses, my personal opinion is that that amendment clause would go a long way towards defeating the proposed Constitution. With some kind of real hope that in the future they would know that it would come up again, that there would be some form of automatic amendment, I feel that large groups of people who are dissatisfied with various phases would still go along.

MR. PARK: Thank you very much.

CHAIRMAN: At this time we will recess and reconvene at 2 o'clock promptly. I hope that anyone who wishes to be heard will be available then so that we can close our hearings today.

(The session recessed for luncheon at 1:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON
RIGHTS, PRIVILEGES, AMENDMENTS AND
MISCELLANEOUS PROVISIONS

Tuesday August 5, 1947

(Afternoon session)

(The session began at 2:00 P. M.)

PRESENT: Carey, Delaney, Ferry, Glass, Katzenbach, Park, Pursel, Randolph, Schenk, Stanger and Taylor.

Chairman John F. Schenk presided.

CHAIRMAN JOHN F. SCHENK: A quorum being present, we will now continue the public hearing of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. At this time I would like to call on Mr. Thomas Parsonnet, if he is ready to be heard. Mr. Parsonnet.

MR. THOMAS PARSONNET: Mr. Chairman, members of the Committee:

As all of you are aware, the State Federation of Labor, on the convening of this Convention, presented to the Convention and to each of its delegates a statement of its position with respect to its beliefs as to proposed changes in the Constitution.¹ It was the impression of the State Federation of Labor that the Convention would accept this brief as well as all the other briefs presented, and would give serious and sincere effort to the preparation of a Constitution which would meet the needs of the times. It was the feeling that the amplification of our brief by oral testimony should not necessarily be required because of the fact that our written brief was complete and full in itself and was self-explanatory. The officers of the Federation felt it was unnecessary to burden the Committee with oral testimony which would merely be a repetition of our brief, and felt that it would be best to wait and see what kind of document came from the Convention. We shall have a convention of the State Federation of Labor in September of this year and it was our intention to present to that convention the document as prepared by the Convention and to seek the instructions of the labor movement as a whole in the State in respect to our attitude as to the final approval or disapproval.

¹ This brief appears in the Appendix to these Committee Proceedings.

I may say that we are very much impressed by the sincerity and hard work which has been done by the Committee before whom we are appearing today. A great many things in it are cause for pride in the Committee. We do feel that the Committee as a whole has been sincere. We started off with the feeling that the Convention had been politically elected and, therefore, with some doubts as to the sincerity of at least some of the delegates to the Convention. We know that there are a great many sincere people in it, however. That is indicated by the result of this Committee's report.

However, there are certain points which we should like to raise and more or less to repeat, because the draft as prepared does not carry out some of the major suggestions that have been made by the Federation.

First, as to the clause on discrimination. You may recall that the first item on our agenda reads as follows (*reading*):

"An effective and self-implementing prohibition of discrimination on the ground of race, color, creed, national origin or ancestry should be incorporated in Article I. It should assure freedom from discrimination not only with respect to governmental acts but also with respect to all rights inherent in the concept of a fair social order, including employment and education, as well as civil, social and political rights and liberties."

The Article as prepared appears as paragraph 5 of the Article on Rights and Privileges on page 11. It reads:

"No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin."

There is no doubt, ladies and gentlemen, that the Committee intended to prevent discrimination with respect to civil rights. But civil rights are not defined in that paragraph and are defined, if at all, only by paragraph 1 which refers to "natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." There is nothing in here about education, nothing in here about the right to a job. It is at least highly doubtful that the courts would construe the right to a job in private employment as a civil right. We believe that this clause should be so implemented, and by that I mean enforceable by resort to the courts without the necessity of implementing legislation.

Bear in mind that on the next page, paragraph 6, the very next paragraph, is a self-implementing right or provision relating to the right of speech or the press. It is rather interesting to remark here that much objection is being made on the ground of class legislation, but of all the restricted classes we have in this country nothing is more restricted than the press as a class. If you talk about class legislation, there is no class fewer in number than the press and no class harder to get into than the press. Yet that paragraph is a self-

implementing paragraph because it is positive and not negative in nature. It reads:

“Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.”

It is a positive guarantee that a person may speak freely. Then it goes on:

“No law shall be passed to restrain or abridge the liberty of speech or of the press.”

Occasion is given to wonder why that positive guarantee was not made with respect to civil rights. We suggest that this paragraph be modified to make it positive instead of negative, and to incorporate a definition of civil rights in paragraph 1 or in paragraph 5 which will be more inclusive.

The point of self-implementation, I think, is self-understood. By that I mean that we could go into court and restrain a denial of a right because it is a positive guarantee of a right in the Constitution, and not negative as indicated here. We believe that with respect to the right of labor to organize the Committee has recognized that organized labor and the workers of the country have a right which must be recognized. It is at this point that reference to class legislation has been made, and that has been covered by me in words earlier. But, again, it is negative and not self-implementing. It reads:

“The right of privately employed labor to organize and bargain collectively and the right of publicly employed labor to organize and present to and make known to the State or any of its political subdivisions their grievances and requests through representatives of their own choosing shall not be impaired.”

Why cannot that be a statement of the right by saying:

“Employees shall have the right to organize and bargain collectively”

instead of saying the right shall not be impaired, and then wonder what right it is that shouldn't be impaired? The reaction we have to this is that this is merely a statement to the Legislature that it shall not adopt legislation to impair the right. Now, that is unquestionably not the intent of this Committee, from the language, I am sure. I think the Committee intended to assure workers of the right to organize and bargain collectively, but that is not the effect of this paragraph. The effect of the paragraph is merely to restrain the Legislature from interfering with that right.

We suggest a reference to our suggestion in our original brief which reads:

“Employees shall have the right, free from interference or coercion, to form, join, organize or maintain labor organizations of their own choice, for their mutual aid and protection.”

We don't need all the language, if you don't want it, but at least what we do want is a statement of the right which can be protected by resort to the courts.

Now, here is another point which apparently arises out of a misconception and confusion between the term "collective bargaining" and the word "strike." They are two entirely different things. A strike is simply a refusal to work because of a desire to improve some working condition or other. Collective bargaining is merely a representation of a group of employees by an individual or small group of individuals in presenting their requests for changes in working conditions. Now, that phraseology is rather common. It exists in the National Labor Relations Act. It exists in the present so-called Management-Labor Relations Act.

The point is that I am sure the Committee has misconceived the definition of the term "collective bargaining" to the extent that it might act as a boomerang in the court interpretation, and let me explain how. It will be perfectly obvious, if this language becomes part of the Constitution, that there has been a confusion between the word "strike" and the term "collective bargaining." As a result, something will happen which I would like, but which some of the members of the Committee may not like, and that is that the guarantee for private employees will be construed by the courts as a guarantee of the complete, untrammelled right to strike even in public utilities. I believe in that. But I am not sure that the majority of the Committee would want that interpretation placed upon this paragraph.

My suggestion, gentlemen and ladies, would be that you do not differentiate between the right of collective bargaining as to public and private employees. Give your public employees the right of collective bargaining but, as suggested by a previous speaker, so far as public employees are concerned, collective bargaining should be subject to law, so that if the Legislature appropriates enough to pay a \$5,000 annual salary to a public employee, you can't bargain for \$6,000, and if the Legislature imposes a time limit of work of eight or nine hours, you can't insist upon six or seven hours. In other words, governmental authority avoids collective bargaining on those things with respect to which the Legislature has acted, but in other things we may be able to negotiate for improvement of our working conditions.

Let's take a very simple example. A rest room may be located five miles away from a place of work. Yet, there are certain municipal foremen, municipal officials, who would resent an individual coming and asking for a rest room nearer one's place of work. That can be done through collective representation. There may be very simple things, while others are more complex, but don't deprive your public employees of the right of negotiation. May I say this, gentlemen and ladies, that for the past three years we have been introducing legislation relating to grievance procedure for public employees?

That legislation has the support of the president of the Civil Service Commission, Dr. Carpenter. It would be along the line of collective bargaining, subject to law. Grievances would be presented to the employer, whether he be municipal, county, or State and, if not settled, would then be presented to a grievance committee representing the employer, the group of workers, and the public through appointment by the Civil Service Commission. That committee would have no power to decide but merely to recommend, and if its recommendation was not abided by, then the recommendation would be made public and the force of public opinion would be brought into play. That bears the support of the Civil Service Commission president. It has the recommendation of the organized labor movement in the State, and it is in line with the theory of collective bargaining as we see it.

We suggest that the confusion in terms may create difficulty and, therefore, recommend that this paragraph first be changed from the negative to the positive, which is of extreme importance, basically important; and second, that it be changed with respect to differentiation between public and private employees, as now exists, but making it clear that with respect to public employees the collective bargaining shall be subject to law.

Now, we suggested in our brief that with respect to the right of suffrage, the age of electors should be reduced to 18 instead of 21. I have been informed within the past few minutes that that matter has been under discussion by this Committee. You have retained the 21-year age limit. We respectively suggest that the Committee is in error. The flag-waving argument can be used that they fought for us, why shouldn't they vote? But that is merely a flag-waving argument. There is a far better one, and that is that in 1844, when our Constitution was adopted, the education which had been provided for 21-year-olds was equivalent to an education which is now being provided for our 15-year-olds, or maybe our 12- or 10-year-olds. The information possessed by an 18-year-old today is far greater, and the intelligence possessed is far greater, than that of the 21-year-old of 100 years ago, and there seems to be no reason why certain obligations of citizenship are thrust upon the 18-year-old and at the same time he is not permitted to exercise the basic privilege of citizenship, the right to vote.

I would like to call your attention also to something that was discussed at lunch today that had not occurred to me until I heard it. It constitutes a substantial danger. In the Article on Elections and Suffrage, paragraph 1, the second sentence reads:

"The Governor and members of the Legislature and such local officers as may be provided by law shall be chosen at general elections."

Now, I am sure this was not intended but, as you know, commis-

sioners in cities under the Walsh Act, for example, are elected in May. The purpose of that is that Walsh Act cities are, theoretically at any rate, non-partisan, and it is provided that elections be held at other times than on general election day, which is a partisan action.

Now, this sentence may be construed as requiring that elections in Walsh Act cities take place in November instead of May, because it says "and such local officers as may be provided by law." Does the "may be provided by law" refer to the creation of a local office or does it refer to the date provided by law for the election? It may be construed one way or the other by the courts. I am sure that this was not intended by the Committee, and I suggest consideration of the language so as to change the possible misconstruction of this sentence. It does not appear in the old Constitution.

One other question which is of great importance to the labor movement. It is in our opinion of primary importance. You may recall in our transmittal letter, which was sent with our brief, we included two paragraphs reading as follows (*reading*):

"Too long have we in New Jersey favored the Hamiltonian theory of the superiority of the few as against the Jeffersonian theory of the dignity and intelligence of all men. Too long have we suffered under an oligarchic form of government provided by the 1844 Constitution in which we are permitted but the choice of annually electing candidates nominated in fact and reality, if not in theory, by the few men who control the political destinies of our State. We concede and submit to you as our basic governmental philosophy that the citizens of New Jersey are competent to govern themselves and that they should be enabled to do so as the essential factor of any new Constitution. . ."

May I repeat, "as the essential factor of any new Constitution"? (*Reading*):

". . . to act without permission of the Legislature to assert their will and to effectuate their will."

The 103-year delay in securing proper modification of our old Constitution results simply from constitutional disability of the people to institute reforms on their initiative. This mistake should not be repeated. I regret to say it apparently at the moment is being repeated. May I read to you one sentence from the Bill of Rights which reads:

"All political power is inherent in the people."

For 103 years that has been a pious fraud in our Constitution, and if this draft of the amendment procedure is continued, it will continue to be a fraud upon the people of our State. All power is not inherent in the people under the existing Constitution. It is inherent in the Legislature. The draft as presented by this Committee is an expression of the philosophy which says that the people cannot be trusted to govern themselves. Clearly, we submit that the people can be trusted to govern themselves. The only way to do it is to

allow the people to have the right to initiate reforms. At the present time, we are blocked. The Legislature must initiate all reforms. We submit that that is highly undemocratic, a continuance of the Hamiltonian theory that has been discarded many years ago. We take the position that the people themselves, the individuals, have the right to govern themselves, and the only way to do it is to provide for a means of doing it. We will admit that the present proposed method of changing or amending the Constitution is a small improvement over the existing method, but we will not admit that it is sufficient to justify whole-hearted support of this document. It is our position that unless the people are given the right to govern themselves, we will remain an oligarchic form of government in the State of New Jersey when we should change to a democratic form.

I think the question of amendment is as of great importance to us as it is to those who have previously spoken. The right of labor to organize and bargain collectively is of profound importance. The anti-discrimination clause is of profound importance. We believe, first, that there should be initiative and referendum and, second, that there should be recurrent 20-year conventions. We would be willing to accept a substitute for the second suggestion. Instead of the recurrent 20-year suggestion, we would be willing to accept the suggestion made by the Committee for Constitutional Revision that there be submitted to the people every 20 years the question whether there should be a convention. But unless we have that we would not regard this document as democratic, or as carrying out the true purpose and philosophy of the expression, "All political power is inherent in the people."

I think that covers the ground that we wanted to present to you. We trust that you will reconsider the points we have suggested, particularly the last point and the self-implementation of the two paragraphs in the Bill of Rights.

CHAIRMAN: Mr. Parsonnet, Mr. Carey has a question. I also have one after his, please.

MR. ROBERT CAREY: You're corporation counsel in Newark?

MR. PARSONNET: That's right, sir.

MR. CAREY: You're not speaking here today for the City of Newark?

MR. PARSONNET: I'm sure I could in the same sense, yes, sir. I'm sure I could feel that the City of Newark agrees with everything I have said, sir.

MR. CAREY: You haven't been authorized?

MR. PARSONNET: I have not been authorized.

MR. CAREY: You haven't been authorized to speak for Newark here today?

MR. PARSONNET: I have not.

MR. CAREY: Whom do you speak for, then, today?

MR. PARSONNET: The New Jersey State Federation of Labor.

MR. CAREY: Have you been authorized by them to speak here today?

MR. PARSONNET: I have, sir, Mr. Marciante, the President, is sitting here.

MR. CAREY: You have read the circular which they filed with this Committee, haven't you?

MR. PARSONNET: Yes, sir.

MR. CAREY: You helped prepare it, didn't you?

MR. PARSONNET: Yes.

MR. CAREY: In that circular you made the suggestion as to what you wanted from our Committee and from this Convention?

MR. PARSONNET: That's right.

MR. CAREY: Now, as an upshot of the filing of that circular and other circulars that have been similar to it, covering that matter and labor matters and amendment of the Constitution, together, in some fashion, you did get action from this Committee, didn't you?

MR. PARSONNET: I—

MR. CAREY: You did get action?

MR. PARSONNET: If you'll permit the answer, I'll—

MR. CAREY: I'm talking quick to you because you're a pretty intelligent man.

MR. PARSONNET: If you don't want the answer, I'll wait till you're through, Judge Carey.

MR. CAREY: Is labor satisfied with what the Committee has done?

MR. PARSONNET: Labor feels the Committee has labored—

MR. CAREY: What's that? I didn't catch that.

MR. PARSONNET: Labor feels that the Committee has labored sincerely, but is not satisfied fully with what the Committee has done.

MR. CAREY: You mean by that that you haven't got what you think labor ought to have? Is that right?

MR. PARSONNET: If you'll permit me to put it in my own words—

MR. CAREY: What is it the Committee hasn't given you that you think you ought to have?

MR. PARSONNET: Labor, sir, represents a vast portion of the population. We do not feel that the Committee has recognized the democratic right of the people to govern themselves.

MR. CAREY: What do you mean by that? They don't mean any thing; those are just words.

MR. PARSONNET: Perhaps, sir, if I could repeat everything I have said heretofore I could do so with a great deal of simpler

construction. Might I say in just a few words, to answer your question, that we do not feel that you have provided a proper amending process; we do not feel that you have given us a self-implementing and effective guarantee against discrimination, or guarantee of the rights of labor to organize and bargain collectively.

MR. CAREY: Now, the Committee says that you may bargain collectively, doesn't it?

MR. PARSONNET: No.

MR. CAREY: What does it say?

MR. PARSONNET: It says that our right to bargain collectively shall not be impaired.

MR. CAREY: Well, have you any rights to bargain collectively?

MR. PARSONNET: Sure we have.

MR. CAREY: Have you any now?

MR. PARSONNET: Yes.

MR. CAREY: You've had them for 50 years, haven't you?

MR. PARSONNET: For 150 years.

MR. CAREY: Never been impaired, have they? Have they?

MR. PARSONNET: That is precisely the point, Judge Carey.

MR. CAREY: Now, let me ask you another question.

MR. PARSONNET: Let me finish that one first. Let me suggest to you, sir, that instead of trying to act as the prosecuting attorney cross-examining the witness, it might be better to try to present a fair point of view; and if that were the way it would be handled, it would be far more successful in reaching an understanding.

Labor has the right to bargain collectively, but it is unenforceable in our courts, as you know. Now, what I am trying to suggest to you is that instead of saying the right of labor shall not be impaired, the Constitution say that employees shall have the right to organize and bargain collectively, so that we can enforce those rights in the court.

MR. CAREY: In other words, you're not satisfied with the Committee's work now, are you?

MR. PARSONNET: It is insufficient. We feel that it is negative instead of positive.

MR. CAREY: I filed a minority report. Do you like my report better than the Committee's report?

MR. PARSONNET: Certainly not, sir. I disagree with you most violently.

MR. CAREY: My report said that the thing doesn't belong in the Constitution at all.

MR. PARSONNET: Well, I think you're entirely wrong.

MR. CAREY: Let me ask you a question. We've had this Constitution without it for 100 years. Is that right?

MR. PARSONNET: Yes.

MR. CAREY: And, during that 100 years, labor has been operating pretty actively—for 60 anyhow, hasn't it?

MR. PARSONNET: Judge, let me say this to you—

MR. CAREY: Now, just answer that question.

MR. PARSONNET: No, let me finish—

MR. CAREY: 50 years?

MR. PARSONNET: Let me say this to you, Judge—that we have had to do it by resort to economic violence instead of by resort to judicial procedure, and we don't want to have to upset the economy every time we plan to get a contract.

MR. CAREY: But for 70 years while you've been doing these things, you've never thought before of putting into our Constitution this clause which you suggest now.

MR. PARSONNET: You are wrong, sir. We thought of it in 1944; we thought of it back in the old days of Wilson's regime when there was then consideration of a new Constitution. Every time it has come up we have suggested it.

MR. CAREY: You never tried to get an amendment to the Constitution in your life, did you?

MR. PARSONNET: Yes we did.

MR. CAREY: When?

MR. PARSONNET: Three years ago. We tried to get it into that Constitution. Back around 19—

MR. CAREY: What about the proposed new Constitution?

MR. PARSONNET: Back around 1910 or 1912 we tried to get it in the Constitution.

MR. CAREY: Now, one other question. Then I'll acquit you and let you have your leave. During the hundred years or almost that time of the activities of your organization, you have never attempted to amend the Constitution of the United States once, have you, by putting in the words that you want us to put in our Constitution now? Have you?

MR. PARSONNET: I am unacquainted with the situation with respect to any attempts to amend the Constitution of the United States. There may have been some. I would not know.

MR. CAREY: And there is no such provision in the Constitution of the United States, is there?

MR. PARSONNET: It's a grave defect, yes, sir.

MR. CAREY: And you today get all your bargaining rights just the same in the United States courts, don't you?

MR. PARSONNET: No.

MR. CAREY: What bargaining rights are you refused?

MR. PARSONNET: With the exception of the bargaining rights that were given to us under the Wagner Act, we had to strike and to use economic violence to get anything we wanted.

MR. CAREY: Now, in your petition to us, that you filed in print, you asked for the right to bargain, and with it you wanted carried the incidental rights of striking and picketing. Is that right? That's what you want now?

MR. PARSONNET: The words were not—

MR. CAREY: You call it peaceful picketing, is that right?

MR. PARSONNET: That is correct, sir. The word picketing was not used in our suggestion. Let me read the balance to you: "to bargain collectively with their employers, and to peacefully strike and conduct peaceful activities in support thereof." We are not too anxious about those words. If we are given the positive right to organize and bargain collectively, we'll be satisfied.

MR. CAREY: Well, you've got that now, haven't you?

MR. PARSONNET: No, sir. We don't have—

MR. CAREY: One other thing—

MR. PARSONNET: No, let me finish my sentence—

MR. CAREY: One other thing—

MR. PARSONNET: Let me finish my sentence, Judge. You asked me a question, and I'm going to answer it, no matter how much you interrupt.

MR. CAREY: Go ahead.

MR. PARSONNET: We do not have the right to force employers to bargain with us by resort to peaceful court procedures. We must, in order to get employers—intrastate employers—to bargain with us, force them to do it by economic violence, and you should be the first to try to eliminate economic violence.

MR. CAREY: And the petition that you filed with us for an amendment, or for a change in the method of amending the Constitution, to provide for an easy method of amending the Constitution, is coupled with your proposition for collective bargaining, isn't it?

MR. PARSONNET: If you think it is easy to get 200,000 signatures for an amendment to the Constitution, I think you are wrong, sir.

CHAIRMAN: Do any other members of the Committee have any question? . . . I just have one. This goes to another subject—amendments only, not revision. Paragraph 3 of your report, "A Simpler Amending Procedure," reads: "We submit that constitutional amendments should be submitted to the people at referendum, at the general election next succeeding the approval of the proposed amendment by a 60% vote of each house of the Legislature." Now, the Federation hasn't changed its position, has it?

MR. PARSONNET: No, sir. We believe that your proposed clause on that is acceptable, with a possible modification of the intervention of the Governor in the question.

CHAIRMAN: In other words . . . Pardon me, go ahead.

MR. PARSONNET: I'm not too sure. We haven't fully considered that point, Mr. Schenk, but with the exception of that it meets completely with the suggestion we have of the amendment procedure. It does not, however, meet our major point of the right of the people to have something to say about it.

CHAIRMAN: Yes, my question merely went to the point of Article IX, the amendment process, where the Committee recommended a 60 per cent vote of each House of the Legislature to initiate amendments after suitable public hearing, and so forth. I just wanted to ask the question whether that wasn't the figure which the Federation had recommended as the figure acceptable to it.

MR. PARSONNET: Precisely.

CHAIRMAN: With the reservation which you have now made, that perhaps the question of also going to the Governor might be considered further as to its merits.

MR. PARSONNET: That's right.

CHAIRMAN: Thank you.

MR. OLIVER RANDOLPH: Will you please repeat what criticisms you have of paragraph 5 [of Article I] with respect to discrimination in the Committee's report?

MR. PARSONNET: I'd be very glad to, Mr. Randolph. I think that it is negative in character rather than affirmative. It says no person shall be denied the enjoyment of any civil right nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin. Now, that is a negative approach to the problem. I submit that it might be very difficult under that kind of approach to secure enforcement of the right against discrimination in the courts. It should be as positive as the guarantee of freedom of speech. There it says every person may freely speak, and so forth. Why should not this say that every person shall be entitled to the right of enjoyment, and so forth? In other words, a swing from the negative to the positive, so that it can be enforced in the courts even though implementing legislation has not yet been secured.

In addition to that, I suggest the phrase "civil right" is not sufficiently defined, so that it might not, for example, relate to the right of employment. Although that is defined in statute, statutes can be changed; constitutions can't be. So that I would suggest a development of the phrase "civil right" so as to include education, employment and the right to use publicly available instrumentalities, such as hotels and so forth.

MR. RANDOLPH: I would ask you what would you think of this clause with respect to a definition of civil right (*reading*):

"The opportunity to obtain employment without discrimination because of race, creed, color or national origin, is hereby recognized as, and declared to be, a civil right."

MR. PARSONNET: I think, sir, that you are being too restrictive there because you do not refer to education; you do not refer to admission to public institutions such as theatres, hotels and so forth; and may I suggest that the representative of the American Jewish Congress who is here today has a very excellent clause which would cover these subjects as well.

CHAIRMAN: Mr. Parsonnet, the technical point which you raised under the Article known as Elections and Suffrage . . . I had a conversation with another delegate about this and, of course, you understand that the words "such local officers as may be provided by law" referred to such local officers as may be provided by law to be elected at general elections.

MR. PARSONNET: If it means that, it's all right.

CHAIRMAN: This language was suggested in the 1942 Hendrickson report and some other previous efforts, and that was the entire intention of the Committee, of course. Now, if it's the judgment of the Convention that the language should be changed, I think that the Committee will recommend such action.

MR. PARSONNET: I submit, Mr. Schenk, that it has been interpreted as possibly being otherwise, not only by myself but by a very capable lawyer who may mention it to you at a later time himself. There is some doubt as to its meaning, and if there is some doubt, then it is better to correct that doubt before it goes into the final draft.

CHAIRMAN: I think undoubtedly that would be the decision of the Convention. There wasn't any doubt, I don't believe, in the Committee's mind; there wasn't any in mine today, but that is a matter which can be explored, of course.

Any other questions from other members of the Committee? . . . If not, we'll proceed with our calling of other witnesses. Mr. H. H. Tate.

MR. H. H. TATE: Mr. Chairman, gentlemen and ladies of the Committee:

I am appearing as chairman of the Joint Committee on Constitutional Bill of Rights. We appeared here too, as you recall, and at that time Mr. Eisenberg and Mr. Hamilton Garner presented our brief.¹ I believe each member of the Committee has received our brief with our proposals. I first want to congratulate the Committee on their labor. We have felt that their efforts have been sincere and we feel that they have labored dutifully.

There is one suggestion that we would like to make, and that is in paragraph 5—and I'll speak briefly to the point of paragraph 5 so as not to be repetitious or burdensome—that you reconsider what you have provided: that no person shall be denied the enjoyment of

¹ This brief appears in the Appendix to these Committee Proceedings.

any civil right nor discriminated against in any civil right on account of religious principles, race, color, ancestry, or national origin. As the previous speaker, Mr. Parsonnet, has said, we feel that there should be a more self-implementing section in the Constitution, somewhat as we presented in the new Section 5-A of our proposal, that no person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof. In other words, try to give the courts something to hang their hats on.

I would like to call the attention of this Committee to a recent case—as a matter of fact, of just a week ago—that was decided in New York State. If you recall, one of the arguments that we presented before was that there should be more definition as to what we mean by “civil rights.” And now, I’m referring particularly to the Stuyvesant Town project, which is a housing project that enjoys local tax exemption for 25 years and this tax exemption will cost the City of New York \$2,000,000 a year, or \$50,000,000 for the next 25 years. Negroes as taxpayers will contribute their share of that subsidy to Stuyvesant Town, but they will have no right to live in the housing project they will help to support.

Now, New York has set forth these laws and they studied and labored over them as you, but at no time did they define this thing as we would like to see it defined here and as you gentlemen have an opportunity at the present time. The Supreme Court Justice, Felix E. McVanger, ruled that housing accommodation is not a recognized civil right. He added that to refuse such accommodations on the ground of race, color, creed or religion, is neither a violation of the State or Federal Constitutions, nor a violation of any statutory provisions applicable to Stuyvesant Town. Justice McVanger in his decision lays great stress on two facts. One is that the state constitutional convention and the state legislature refused to write anti-discrimination clauses into public housing. The other is that the city’s own anti-discrimination ordinance was passed after the inception of the Stuyvesant Town project. In this case he said the courts are not asked to make legislative policy but to apply basic constitutional safeguards. Neither the state nor the city government could authorize racial discrimination in public housing without violating the Constitution. Well, it’s for an avoidance of that sort of thing that we’re asking you to make this paragraph so clear. If we are to carry out the democratic theory that we exploit, let’s not have such confusion open to such interpretation by the court, that they can avoid that which should be a basic right of every citizen.

I am not going to go any further in the discussion of this because there is to follow me Mr. Pfeiffer, the general counsel of our joint committee, and he will pick up the more technical aspects of it. But

if there are any questions the Committee would like to ask me now . . .

MR. JOHN H. PURSEL: May I ask one, please? I read that Stuyvesant Town decision in the *Herald Tribune* and it seemed to me that the judge went on the following grounds: He said it was a privately-owned project and therefore, in spite of the discrimination statute, the private owner had a right to rent it to whom he pleased; and he went on into the theory of the tax exemption which was allowed and he said that that didn't discriminate against the colored people because the state's interest had been served, in allowing the tax exemption, by getting rid of a slum area. Was that the basis of the decision, or wasn't it?

MR. TATE: Well, that was part of the decision; but regardless of what the decision might be, it has the same result—that certain citizens, a sizeable segment of the population, are deprived and were deprived of admittance to a housing project which received a subsidy from the public money.

MR. PURSEL: Well, do you feel that we can pass a clause that will prevent private contract discrimination? That is, a man might not want to rent to someone he didn't just like individually, and do you feel that the State can go into every problem like that and say you must rent to this one, you must rent to that one?

MR. TATE: Well, I believe, sir, that if we define what is a civil right, then that will give the opportunity—give the citizens of the State the opportunity—to obtain their rights under the Constitution, and then we won't have to depend upon the Legislature from year to year to guarantee any rights.

MR. PURSEL: Now, as I recall—and I didn't look up the law, but in the course of all this, reading all this written material that has been given to us—I recall, I think, that there is a case cited which said that the right to a job was a civil right. Do you agree with that?

MR. TATE: Yes.

MR. PURSEL: Thank you.

CHAIRMAN: Do any other members of the Committee have any questions?

MR. RANDOLPH: I dare say you mean to enforce the argument that where there is a tax exemption there should be no discrimination?

MR. TATE: I certainly do.

MR. RANDOLPH: That's all.

CHAIRMAN: I understand your desire to have the rights defined in this Constitution. I appreciate the thought. On the other hand, if the Constitution states the basic, overall principle, it is a fact, isn't it, that the Legislature could implement it from year to

year, make additions that were needed, and thereby over the years get an all-inclusive interpretation of this general civil rights clause?

MR. TATE: That may be true, Mr. Chairman, but as the prior speakers have stated, we can avoid all of that by making it now in the basic Constitution and save time. If the amending process is going to be a difficult decision then we have delayed on the path of democracy.

CHAIRMAN: Well, I think my question runs to this,—that we state the broad principle and then the Legislature interprets and amplifies it. It seems to me that in the Constitution we should, speaking from my personal viewpoint now, stick to the general philosophy. The tendency, it seems to me, is for the specific to become the general, and if you attempt to list in the Constitution certain civil rights, then the courts may interpret many that occur later that we don't dig up today, that should be civil rights, to mean that they are not. In other words, these will be the only civil rights. I'm not trying to labor the point; that was just the Committee's thinking. We thought we had an all-inclusive clause here which, if properly and sincerely and fairly interpreted by the Legislature, would throw an overall blanket of protection against every form of discrimination.

MR. TATE: Well, I don't doubt the sincerity of that, but I only pointed out that New York case to indicate just what happened even though they thought they were writing it into the New York Constitution.

MR. CAREY: Will you name me now one civil right in the world which you think you're entitled to which you haven't got right now under the law of this State?

MR. TATE: That's not too difficult, Judge—this very housing question. I believe it's a civil right of any individual to obtain housing, and yet there is no definition.

MR. CAREY: Well, you have the same rights as every other citizen in New Jersey has, haven't you?

MR. TATE: No.

MR. CAREY: Give me any one right that you haven't got—can't enjoy—that I've got.

MR. TATE: Well, I can still point to housing.

MR. CAREY: That's all you'll say—you'll point to housing?

MR. TATE: Yes. Then—

MR. CAREY: Well, what right have I got in housing that you can't get?

MR. TATE: Well, there are certain clauses that are written into deeds, restrictive covenant clauses, Judge. I assume you are acquainted with them—restrictive covenants which would deprive me of the right of living where I might choose.

MR. CAREY: Tell me, whom do you represent here today?

MR. TATE: The Joint Committee on Constitutional Bill of Rights.

MR. CAREY: Who are they? That doesn't mean anything.

MR. TATE: That's a group of organizations, the Urban Colored Population Commission, Professor Albert Einstein, Jerome C. Eisenberg—

MR. CAREY: Where is it located?

MR. TATE: This is an organization, a joint committee which was constructed for the purpose of presenting—

MR. CAREY: How many people have you got in the organization?

MR. TATE: It represents several hundred thousand.

MR. CAREY: Several hundred thousand?

MR. TATE: Yes, that's right.

MR. CAREY: Who?

MR. TATE: Well, the New Jersey State C.I.O., I think, has already expressed its numbers, and they are a part of this committee; the New Jersey Federation of Labor; the American Jewish Congress; the League of Women Shoppers.

MR. CAREY: What are you reading from?

MR. TATE: I am reading the report which was submitted to your Committee, listing the organizations.

CHAIRMAN: Mr. Park has a question.

MR. LAWRENCE N. PARK: Mr. Tate, I am not too familiar with the technical operation of the problems you have, but I am aware that down in Atlantic City there has been a slum clearance project which is occupied exclusively by colored persons. I am just wondering—if your proposition were to be advanced—whether it would prevent the construction of those public housing projects for colored persons? We have one of them, I think, in Camden. Would that prohibit that?

MR. TATE: I don't think I quite understand you, sir.

MR. PARK: Well, I may as well start all over again. In Atlantic City there is a housing project, part of a slum clearance program.

MR. TATE: Are you referring to the project that was originally a federal housing project?

MR. PARK: Yes. I don't know exactly the setup; I just know where the buildings are and have been by them. It is possible that New Jersey may desire to do something of that type. Would the proposition that you submit, which is directed at preventing types of discrimination, prevent the State in turn from discriminating by erecting housing developments for segments of the population that economically simply can't and probably will not be able to afford adequate housing without public assistance?

MR. TATE: Are you now referring to the segregated housing unit?

MR. PARK: Well, I don't know what you call them or what they are; all you have to do is go by and look, and if you knew the situation before you know that there was an area that was almost exclusively occupied by colored persons. They tore down the old ramshackle houses and set up very substantial and satisfactory quarters now open, I think, only to colored persons.

MR. TATE: Well, I believe the basic philosophy on housing for slum clearance is that where such housing is built, that the composition of the tenants shall be the same as the groups that were displaced, so that if it were predominantly Jewish and those people were displaced by reason of this housing project, they would have the preference in remaining in the particular area in which they had found themselves—not that any segment of the population would be prohibited from occupying those projects.

CHAIRMAN: Any other questions? . . . If not, we'll proceed.

MR. TATE: Thank you.

CHAIRMAN: We want to try to finish our hearing today, and I know all the witnesses probably would like to be heard today, and we are going to sit until we do hear everyone. If you have a question to discuss in which the philosophy has been pretty well explored by others, perhaps you will be able to condense your remarks and still give complete fairness to your own viewpoint. That's entirely up to the witness. I'm merely making this suggestion because time is moving along.

Mr. H. A. Lett.

MR. HAROLD A. LETT: Mr. Chairman, ladies and gentlemen of the Committee:

I'm here to speak for the State Division Against Discrimination, an official arm of the government that has had placed upon its shoulders the terrible job of attempting to eliminate some of the problems and to minimize some of the tensions that have been created by many, many years of neglect, of the thing that is involved in this paragraph 5 dealing with a definition of civil rights.

First, I am a chief assistant to the director of the Division Against Discrimination, and in your earlier hearings the Division and the State Council were represented by Mr. Joseph L. Bustard, who is the director of that division. That is under the Department of Education, the State of New Jersey.

We do wish to commend this Committee for the thankless task of attempting to define a Bill of Rights that would meet the desires of the many interests in the State of New Jersey. We believe, however, that the responsibility of every member of this Convention and of every member of a subcommittee of this Convention, is one that

was referred to in the very well chosen remarks of the Chairman of this Convention not so long ago, when he spoke of the constant battle between principle and expediency, in developing that which will be the basic law of one of the foremost, one of the oldest, and presumably one of the most intelligent States in the Union, the State of New Jersey, and that in shaping a Constitution under which this social entity shall operate, the matter of principle shall be the guiding influence, rather than the matter of expediency. Nowhere in the discussions of this Convention has this conflict between expediency and principle been exhibited more than in this area of civil rights, where the interests of so many varied groups are at stake. And there again, the whole principle of the job is the one that should be the determining factor, whether or not those interests are in the democracy or whether those interests are in the interests of preventing democracy to function. We have found a segment of our population throughout the State and Nation constantly expressing fear on the one hand of communism, or on the other hand of fascism. And there are times when these items are under discussion—the matter of civil rights of citizens in a democracy are under discussion—that we wonder whether or not there aren't those who also fear democracy. And may I make this point: that for those who fear democracy to the degree that they will prevent its realization, we there are taking our longest steps toward one or the other ideologies which we fear even more greatly than we fear democracy; that the principle involved in making a basic law which will be applicable to every citizen of the State is the one prevention against those ideologies which most of us fear in one sense or another.

In this area of civil rights perhaps expediency and perhaps a desire to find a common language have given us an instrument which will have relatively little meaning to those people who need the protection of the Constitution. As has been pointed out, so vague are these words, so limited the area's coverage, that they lead to any possible interpretation.

The previous speaker has given a splendid example in terms of the right to housing. I believe the Chairman of this Committee, or the Chairman of this session raised the question of using verbiage that would enunciate a broad principle that could be applicable anywhere.

May I say to you, gentlemen and lady, that we have been operating under that kind of broad principle these hundred years and more, a broad principle that says "All men are by nature free and independent, and have certain natural and unalienable rights." But in spite of the enunciation of that broad principle, we have not had the implementation that would give those broad and unalienable rights to the people who are the citizens of this State and who must

bear the responsibilities of citizenship without sharing in its benefits. And when we think in terms of that twin, the twin of civil right and of civil responsibility, of social right and of social responsibility, we can't have one without the other; we can't find a responsible citizenry that has been denied the benefits of citizenship; and in order to get responsibility and responsible citizenship we must give the rights which enable citizens to grow in order to achieve and to merit those rights. The denial of the one is certain to delimit the other.

Now, we have mentioned the right to vote as a basic civil right, the right to work as a basic civil right which has been implemented only within the past two years. Until the Legislature adopted chapter 169 of the Laws of 1945, the right to employment was not a civil right. And yet we can go back to the labor report, the report of the Commissioner of Labor of this State of New Jersey, in 1903, where practically a third of his report was devoted to the denial of that right to employment of one minority group in the State of New Jersey, a minority group which became a public responsibility in terms of public relief because no one was concerned about guaranteeing their right to get and to hold a job. We have today in the statutes of the State of New Jersey urban redevelopment laws that given certain rights to corporations, with the municipal, county and state governments backing them—the right of eminent domain, in order to acquire properties for developing homes in which the people whose properties have been taken may not live because the right to live in a decent surrounding is not a civil right in the State of New Jersey.

I can cite a particular example—one of many that can be found in any major community in the State of New Jersey—about what this business of exploitation of people who are denied their rights actually means, not only to the victims but to the total community. We have in a North Jersey community one of 100 different plots of ground, 50 by 100 feet, the same kind of Jersey red clay that you will find any place else. On that one piece of ground a multiple dwelling was erected, perhaps 35 years ago. It was built originally for 12 families. That house and those 12 units served successive waves of immigrants coming into the city, the outsiders, the aliens, the people who were not a part of democratic society. One, two, five, six, eight such waves of immigrants had occupied that place and had taken something of the soul out of that house, as well as many of the material factors that make for good living or for poor living. That house subsequently has been subdivided in order to provide accommodations for 12 families and the total income from that piece of property, the gross income from that piece of property, is approximately \$300 per month without anything going back into it

in the way of repairs, renovation or rehabilitation. There is a similar piece of property in another section of the town where the outsiders, the aliens, may not live. It is also 50 by 100 feet and a nice 12-room house is built upon it. People who live there pay \$125 a month, but something is always going back in the way of repairs, renovation, rehabilitation. The people who live in the former property have to live there because they can't get away from it, because these restrictive covenants, these unwritten laws, all of these things which define second- and third-class citizenship, are still a part of the basic law of the State of New Jersey. They can't live in that other place because society and the absence of law decree otherwise. What does that mean to the people who are living there? What does that mean to the entire community, where hundreds of such developments are to be found, where people constantly continue to exploit the poverty and the second-class citizenship of the people who are forced to live in that first place? It is a constant daily exploitation.

The story of employment is the same story, day in and day out, of people who are exploited because of the accident of birth and because in our democratic society we have not seen fit to implement these beautiful, these high-sounding ideals, which represent our dreams of democracy but which we fear to bring into reality.

In the matter of recreation, the building of a personality, the making of a good citizen, what rights have people who are second- and third-class citizens under the existing law or under the law that is being proposed? In the realm of education, that thing on which sound, solid citizenship is based, what rights are given to those who are second- and third-class citizens? I sat in a conference just recently with a group of educators in a specialized area. They were discussing this problem of discrimination, inasmuch as they were educating and placing people out in business and industries of the State of New Jersey. Each one said, "I can't operate on a non-discriminatory policy because I'll be up against unfair competition. These fellows who don't want to be democratic will leave me behind the eight ball if I am decent, if I am fair." So the entire operation of that scheme of education is closed to these second- and third-class citizens because the basic law of the State New Jersey does not say that it is a civil right for any person who is a citizen of New Jersey to have access to all the educational facilities that are in the State of New Jersey.

We can go into every area of living. We can touch this one thing of providing for the economic future of a family, the one little thing that they call insurance, life insurance, the building of an estate, where second- and third-class citizens may not have that protection because it isn't the basic law. It is a little thing that protects

you on the road when you are driving your car. The statutes of the State of New Jersey say that a person must provide financial responsibility in the event of an automobile accident, and yet there are hundreds of thousands of citizens of the State of New Jersey who cannot get the insurance by which they can provide that evidence of responsibility, and they deny you your protection because you may not purchase that kind of protection.

These are the things that we are talking about in specific instances when we say that the basic law of the State of New Jersey must provide those basic rights and must define them in such way that one doesn't have to go through all the courts of the land in order to prove that he has a right to live under the same sun as anyone else. These are the things, gentlemen and lady, which are your responsibility and touch upon this area of civil rights. These are not just empty things that we are trying to throw out to you. They have to do with every phase of living of the individual who claims himself the victim of discrimination. If we are to perceive this idea that we know to be democracy, we must provide the instrument whereby it can be made meaningful, because our pretensions to the people of mid-Europe and southern Europe on the benefits of democracy have very, very little meaning if we are not able to convince ourselves within our hearts that we believe in the people and their right to participate in this thing called democracy. If we believe it, then as a principle it should be written here. If we don't believe it, then let's scrap the whole thing and start from scratch.

CHAIRMAN: Are there any questions?

MR. LELAND F. FERRY: Mr. Lett, do you mean to imply that insurance companies deny insurance protection to certain types of "second- and third-class citizens" that you have mentioned, merely because of their race, color or creed?

MR. LETT: I don't mean to imply that, sir. I wish to state that emphatically. They do deny that kind of protection.

MR. FERRY: Well, isn't it true that it is denied because that particular individual is considered a poor risk by the insurance company—not by reason of his color or race, but just by reason of the man's set-up? I suppose you are referring to a large extent to colored people. Now, I know of a number of colored people who have insurance, both life insurance and automobile liability insurance. So it isn't a hard and fast rule.

MR. LETT: It isn't a hard and fast rule in certain specific areas. There are certain companies that will issue certain kinds of insurance, both automobile casualty and life protection. There are other concerns that will issue absolutely none, and there are those concerns which will issue a very limited type and variety of coverage upon this particular group of persons, the assumption being that it

is not denied because they are colored, shall we say, but because they are poor risks. But then they will go back to their actuarial tables based upon the preponderance of low-wage people, people who live in slums, and on the basis of that deny all who happen to be identified with a racial group, without any concern for their economic status or their intellectual capacity.

MR. FERRY: Well, you don't mean to urge at this time that that is a general rule that is prevalent in this State today?

MR. LETT: Well, yes, I think I can say that. As I said, there are certain exceptions, certain limited areas of exception, but as a general rule that applies. It's a rule by virtue of the proof of the exception. Shall we put it that way?

MR. FERRY: Well, you put it any way you want. All right.

CHAIRMAN: I guess there are no further questions, Mr. Lett. We will proceed with our hearing.

Mr. Morgan Seufert? I have the name here of Morgan Seufert.

(No response)

CHAIRMAN: We will pass to the next name. Mr. Pfeiffer, Mr. Leo Pfeiffer, I believe. Is that correct?

MR. LEO PFIEFFER: That's right. My name is Leo Pfeiffer, I am the general counsel for the Joint Committee on Constitutional Bill of Rights, of which Mr. Tate, one of the previous speakers, is chairman. I don't want to repeat what Mr. Tate said; I just want to fill in a few technical points which he left for me.

First, I want to answer a question which was raised by one of the members of the Committee on the desirability of spelling out specifics in the Constitution, as distinguished from setting forth general principles. As Mr. Tate pointed out, the failure of the New York State Constitutional Convention to spell out the specific of the right to housing as a civil right resulted in a disastrous situation whereby a city within a city, such as Stuyvesant Town, which is given the public right of eminent domain, the right to be free from taxation, is nevertheless permitted to discriminate and deny accommodations to persons by reason of race, creed or color. I would like to point out to this Committee that your present Constitution is not satisfied with general propositions. If you look at paragraph 6 of the Article on the Bill of Rights, you will find a lone paragraph on the right of freedom of speech and of the press. As you probably know, the first amendment of the Federal Constitution starts out with the words: "Congress shall make no law * * * abridging the freedom of speech or the press* * *." That is about eight or nine words. You have a complete paragraph spelling out specifics.

You will note in paragraph 9, you have a paragraph in regard to impartial jury (*reading*):

“to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.”

Those are specifics. The Constitution could very well have said: “Every person shall be entitled to a fair and impartial trial.” That is a generality. But generalities apparently are not always deemed sufficient. Hence, specifics are spelled out. The specific of the right to counsel, the specific of the right to be confronted by witnesses, the specific of the right to subpoena, the compulsory process. There isn’t a Constitution of the 48 states—and I have studied most of them, if not all of them, as well as that of the Federal Government—which does not employ specifics, which does not spell out the meaning of the Constitution. It should not leave gaps. It should not leave voids which lead to unfortunate decisions. It should lay the line down for the courts and the Legislature to follow.

We think that—and I don’t want to repeat what was said so eloquently before—we think that a Constitution with broad generalities such as I am afraid the Proposal which your Committee has submitted, such broad proposals are frequently more harmful than beneficial. They give the appearance of solving a problem without actually solving it, because they leave it to the courts to say that if the Constitutional Convention had meant that the right to be free from discrimination in education is a civil right, it would have said so; if the constitutional fathers had intended that a person shall not be discriminated against in public housing merely because of the color of his skin or his birthplace or his father’s or mother’s family, the Constitutional Convention would have said that. I am not saying that they impliedly excluded that. I am not telling you something which I am imagining. That is the wording of a New York decision—that if the New York State Constitution Convention had intended that the right to be free from discrimination was a civil right, it would have said so. We are asking you to do that; we are asking you to avoid ambiguity; we are asking you to say so. If you mean it, say so. If you don’t mean it, then it should be so indicated clearly that you don’t mean it. But there should be avoided generalities which can satisfy your conscience yet not solve the problem.

I should like to point out to this Committee one section which is not directly related to civil rights but which was discussed here this morning. That section on condemnation, I believe, will require amending. I think that in amending it you might include there a provision to take care of the Stuyvesant Town situation—that where the State or a municipality confers the right of eminent domain upon a private corporation, by that very fact that private corporation becomes a public corporation, subject to the same disabilities of discrimination which limit the acts of the State and municipality.

If you will note, gentlemen, paragraph 17 provides that there shall be no condemnation by individuals or private corporations without just compensation first made to the owner. The question was raised whether that would not deprive the people of the use of a public improvement over an extended period of time because of the litigation which is frequently involved in condemnation proceedings. I think that that provision should be amended so as to provide "without just compensation first made or provided for to the owner." The reason for that is, as you well know, that condemnation proceedings frequently involve litigation of title which takes maybe years to decide. Until that litigation of title is settled, the State or the municipality, or the private corporation acting in behalf of the State or the municipality, cannot make payment. It can pay into court to provide the payment, but it cannot make payment. Under this paragraph, as you now have it, you may hold up an improvement for five years until A and B litigate whether a certain covenant or certain deed which was executed 300 years ago provides for title in A or B. You know that those things very frequently happen. Until that is decided, you cannot make payment and you cannot, therefore, according to this paragraph, go ahead with the improvements.

That paragraph will have to be, I believe, amended. I suggest that in amending you include the provision which we have in our brief submitted to you, to the effect that property taken for public use shall be enjoyed without discrimination because of race, color, religion, origin, or ancestry. That paragraph is predicated on the proposition which we believe is undeniable, that condemnation is an act of the State; it is an act of sovereignty; the power to make that act is based upon the fact that that which will be taken will be used by the public. Condemnation means taking for public purpose. "Public" means all the public, all the people. It means that if A's property is taken for public use, then every member of that public must have the right to enjoy that property. That is what the court in Stuyvesant Town did not do. That is one of the things we are asking you to do.

We believe that is equally applicable to employment; we believe that is equally applicable to education; we believe that is equally applicable to public accommodations, to railroads, to hotels. We believe that every civil right which the 20th Century recognizes should be protected in this Constitution.

Thank you.

CHAIRMAN: Any questions? . . . We will proceed, then. Thank you, Mr. Pfeffer.

Mr. Crane, Harry Crane?

(No response)

CHAIRMAN: We will pass to the next speaker, then. Mr. Nat Brooks. We have about eight speakers to be heard yet, and I think if we proceed we can take care of everyone today. . . . Mr. Brooks.

MR. NAT BROOKS: Mr. Chairman and members of the Committee:

I am representing the New Jersey American Youth for Democracy. I want to follow the suggestion of the Chairman and not repeat many points upon which we are in agreement with the speakers who have appeared here previously today. In fact, I would like to associate myself and the organization with the views expressed by all of the previous speakers who have appeared here today on the question of labor's right and on the question of the amending process.

I particularly want to speak for a moment in support of the proposals made by the Joint Committee on Constitutional Bill of Rights. Our organization believes that this is of particular importance to the young people of this State, because discrimination in education is of paramount importance to them. Discrimination in public places, and particularly in places of recreation like swimming pools, skating rinks and the like, is of particular importance to them. I should like to call to your attention that many young people today in the State of New Jersey feel that they are facing a blind alley, particularly when they are members of a minority group and they see that when they go out for employment—and I know of many cases in my personal experience of this nature—they are faced with only opportunity for the lowest paying jobs, the most menial jobs, or no jobs at all, if they are of the minority group. When they look to go to college to pursue higher education, they likewise are confronted with what has been called "quota systems" and other means of discrimination against young people of minority groups. When they attempt to go swimming, go skating, or to go to other places of recreation so that they need not spend their time on the streets, they find once again that if they are of minority groups, particularly if they are Negro, these facilities are effectively closed to them. That is why the young people in our organization and many other young people in the State feel that the most important things for them from this Constitutional Convention are not the politically or technically complex questions concerning many of the matters which are dealt with by the Constitution, but the things by which they will judge the Constitution are those things which they can clearly see will be reflected in the conditions of life which they face. That is why I would like to express our wholehearted support for the point of view expressed that paragraph 5 should be changed so as to define specifically the civil rights which are to be granted to all citizens, free from discrimination.

Now, there are just two more points which I should like to touch upon briefly. One is on the question of discrimination in civil rights against people because of political beliefs. Our organization has viewed with alarm recent developments in our country which indicate an increasing attempt to discriminate against people who hold currently unpopular political beliefs. We feel that this is contrary to the very democratic basis of our country and of the State. We feel that the privilege or the right of civil rights shall be held irrespective of political belief and that this may be incorporated either by adding it in paragraph 5 where you speak of race, etc., or that it be incorporated into a new section.

Finally, with respect to the age of suffrage, we feel, as the State A. F. of L. speaker has indicated and as I know the League of Women Voters have previously testified, though they did not do so today—but they inform me that they stand by their opinion on this matter—we feel that the voting age should be reduced to 18 because we feel that the graduates of the high schools in New Jersey today who have just finished their instruction in problems of American democracy, who have a very keen interest in civic and governmental affairs, should be allowed the privilege to vote. We feel that that will stimulate better citizenship and more alert citizenship among the young people in our State. We feel, too, that many people of 18, 19 and 20 years are today working, many of them are married, a great number of them went to war, and they are assuming the full responsibility of citizenship and of an adult life. We feel that it is undemocratic and unjust to deprive these young people of 18, 19 and 20, of the right to vote.

We have looked into this matter of the origin of the age of 21 and we find that it dates back to medieval times when it was felt that only upon reaching the age of 21 was a person able to wear a knight's armor and carry it successfully. But we feel that that has no relevance at all to our modern civilization. We feel that today, upon graduation from high school, upon going out into the world of marriage, of jobs, and the like, that the young person of 18, 19, or 20 should have the right to vote, and if he does so will become an active, democratic citizen.

I thank you.

CHAIRMAN: Do any members of the Committee have any questions?

(Silence)

CHAIRMAN: Mr. Brooks, you mentioned a growing tendency in this country to perhaps restrict people because of political belief in their civil rights. Are you referring to Communists?

MR. BROOKS: I am referring to them primarily.

CHAIRMAN: Thank you. Any other questions? . . . Thank you, Mr. Brooks.

We will take a five-minute recess and I will ask everyone to be patient. We shall still hear everyone, I think, and be finished by five o'clock.

(Five-minute recess)

CHAIRMAN: The Committee will come to order. . . . Mr. Walter Pollschuck.

MR. WALTER POLLSCHUCK: I represent the Young Progressive Citizens of America of Newark, which is affiliated with New Jersey Independent Citizens' League, whose chairman spoke here this morning, Mr. James Imbrie. We are also affiliated with the Progressive Citizens of America.

We stand solidly in back of our parent organization, the New Jersey Independent Citizens' League, in regard to the amendatory procedure. Being a youth group, although we are not so youthful that the majority of us aren't voters, but being a youth group, we feel very, very strongly that the amendatory process is something that affects us immediately. When the day comes that we are established citizens, which won't be too long, when the day comes that our group will be the leaders of this Nation, we want it [the amendatory procedure] to be comparatively simple—not so simple that it is ridiculous, but simple enough so that in view of changing times we will be able to change the Constitution. We feel that the amendatory procedure as it has been set up by you at this time is not satisfactory. It would make it entirely too difficult to change the Constitution. We would like very, very much to see you make it a lot simpler than it is.

Now, being a youth organization, we have certain specific interests, as I have pointed out. Specifically, the most important one, on which we are backing our parent organization, is the amendatory procedure. However, probably the most important feature which we would like to see in this Constitution is in regard to the question of discrimination. Especially we want very, very strongly in this Constitution an explanation of what is a civil right. As many, many better speakers before me since early this afternoon have been saying, it is absolutely necessary to have an explanation in the Constitution of what is a civil right. We recognize, as a youth group, that when one class in our society, when one segment in our society is kept down, that society as a whole is kept down. Whether we recognize it now or not, it is a fact, and proof of the fact is the South. When one class of the South is kept down, the entire South is kept down, and that will always be the case. We must guarantee in this Constitution that everyone will be a free and equal person, and we must guarantee it in a positive manner, not in a negative manner,

as has been pointed out by many legal experts earlier in this program.

Now, as a youth group again, we are particularly interested also in the question of the 18-year-old vote. As I pointed out before, in our particular organization we happen to be mostly voters. Nevertheless, we are very specifically interested in the 18-year-old vote. We feel very definitely that a man graduating from high school or a woman graduating from high school is as qualified at that time as he or she ever will be to vote. In many instances, from personal experience, people graduating from high school are immediately interested in the organization of their government. However, a period of three years ordinarily passes before he or she ever gets to vote. During that time very, very frequently the interest lags. If they were able to vote immediately upon reaching the age of 18, their interest would be kept up so that as they grew older they would maintain an interest in politics, in voting. We feel very strongly that the 18-year-old vote, for this reason and for other reasons, should be included in this Constitution.

I would just like to point out, and I am going to make this very, very brief, that as a youth organization, we stand solidly behind the labor organizations who recognize our members who are laborers. We are workers, we are working people, and we recognize that the right of labor must be guaranteed. We stand solidly behind the A. F. of L. and C.I.O. speakers who have been here today. We hope that you, the Committee on Civil Rights of the Constitution, will listen to our plea, to the plea of the young people of the State of New Jersey, that you change the amendatory process of the Constitution, that you include an explanation of what are civil rights in the Constitution, that you change the vote to the 18-year age limit, and that you secure the rights of labor to the people.

CHAIRMAN: Any questions? . . . If not, we will proceed.

Mr. Lewis E. Thompson.

MR. LEWIS E. THOMPSON: Mr. Chairman, and members of the Committee:

I came to New Brunswick today without any prepared remarks on this subject. I am connected with the Small Business Association of New Jersey which is a branch of the Conference of American Small Business Organizations whose headquarters is in Chicago. I came to this session today without any prepared remarks but I thought under the circumstances I at least should make a token presentation of the ideas of small businessmen of this State.

Answering in advance the possible question from the gentleman on the right end of your row of directors, I will have to admit that I do not represent any particular number of small businessmen, neither have I taken a referendum on their exact opinion on these

subjects. I do claim, however, that I am closely in touch with small businessmen and feel that I have a right to speak for what I think they believe.

I think it is very important that this Constitution be adopted. For that reason, I would hope that the very controversial sections would be eliminated so the people would accept your work.

I am glad to see that this State has so many self-sacrificing citizens who will work so hard on these committees, and I think it would be of the nature of a tragedy if your work were wasted.

Now, in regard to the amendment process, which I think is near the end of the draft that you prepared, it really is one of the very important features of your proposed Constitution. I think in it you have done a creditable job in that you have endeavored to make it possible to amend the Constitution of the State quickly. If there is a crisis or an emergency, it is possible to do it in one year instead of two. Yet you have made it harder to amend the Constitution, which is another way of saying that it must be indisputable that the necessity for the change is required. I think that the small businessmen of the State would like to have it that way. Most of them are conservative people and I doubt whether they would wish a popular demand in an emergency to make an undigested change in the Constitution.

Now, that is the reason why I think that since this Constitution, if it is adopted, must serve us for a great many years, it should not endeavor to set in a strict frame some of these things which the years may change very rapidly. I can remember—you will see by the color of my hair—I can remember amendments to the Federal Constitution over a considerable period of years, and I need only to recall that one of the amendments had to be repealed, withdrawn. It was adopted without complete consideration. So, if we are going to put in our Constitution hard and fast rules about people's ability to get jobs on account of their personalities, we are going to put in too fast a frame something that may be entirely different in years to come.

The Conference of American Small Business Organizations, in examining what small businesses want over this whole country, has found that they are very much opposed to fair employment practice legislation. A small businessman is in close contact with his helpers. They are in the same office, often use the same desk. It isn't right to make that sort of a man employ someone who would be uncongenial in these close contacts.

The Conference of American Small Business Organizations also, after taking the opinion by a referendum vote of many thousands of business men, supplied many of the ideas that are now incorporated in the Taft-Hartley national legislation on this subject of labor, and in it they have brought out many of the points that are in that

law. I hesitate to have in our Constitution a strict provision for collective bargaining, in any form. It may be very different ten years from now. You can hardly select appropriate language. The English language is very defective in providing for a long-time use on such a controversial subject as collective bargaining.

As regards the ability of public employees to organize and to express their views as to what they should have or not have from their selfish standpoint, I should say that the chief reasoning on the matter of public employees is that the public service should be uninterrupted. When a man takes a position in public service, he should know in advance, when he takes that position with the various advantages that go with that position, that he is working in a public organization in which the service should not be interrupted. Now, I can see that work in parks and some of those things could be interrupted without great damage to the public welfare, but there are many other things in which it is very inconvenient and dangerous to the people as a whole to have the interruption of public services.

I hope that you will re-write your draft and endeavor to remove these controversial subjects so that we can have a new Constitution in New Jersey, so that everybody will accept it. The more enemies you make for it the less likely you are to have it.

Thank you.

CHAIRMAN: Thank you, Mr. Thompson.

Are there any questions by members of the Committee? . . . I guess there aren't any questions.

Mr. Arthur Torrey.

MR. ARTHUR M. TORREY: Mr. Chairman, members of the Committee: My name is Arthur M. Torrey. I am appearing for myself, representing no organization.

I want to address myself very briefly to just one point in the Proposal of the Committee, namely the clause in paragraph 19 of the Rights and Privileges Article (*reading*):

"The right of privately employed labor to organize and bargain collectively and the right of publicly employed labor to organize and present to and make known to the State or any of its political subdivisions their grievances and requests through representatives of their own choosing shall not be impaired."

One speaker told you this morning that inasmuch as the largest group of citizens in the State is that comprised of employees, this clause should be included in the Constitution because the Constitution should be written for the majority of the people. I wish respectfully to differ with that assertion and suggest to you that a Constitution should be written to protect all of the people. That being true, I want to call your attention to the fact that this provision undertakes to guarantee a right to a separate group of citizens.

You will note that under the proposed Rights and Privileges Ar-

ticle, paragraph 1 begins: "All persons"; paragraph 3 begins: "No person shall be deprived"; paragraph 5 begins: "No person shall be denied"; paragraph 6: "Every person may freely speak"; paragraph 7: "The right of the people to be secure"; paragraph 10: "No person shall be held"; paragraph 11: "No person shall after acquittal be tried"; paragraph 18: "No person shall be imprisoned"; and even this paragraph 19, to which I make reference, starts: "The people shall have the right." But then the Proposal goes on to say: "The right of privately employed labor," a class all by itself. I submit to the Committee that by that token this is a legislative proposal. It is not a proposition of fundamental law which should be written into the Constitution.

It was pointed out this morning by Judge Carey that the right to bargain collectively has been a right ever since the first labor union was formed in this country. As you know, it was given statutory recognition by the Congress of the United States a dozen years ago. I would call your attention to the fact that this year, after having operated under that statutory recognition for 12 years, the people of the United States, through the Congress, have found it necessary to make changes with regard to the guarantee of collective bargaining. Your clause winds up with the words: "shall not be impaired." The country has found after 12 years of guarantee of collective bargaining that it is advisable to impair that right under certain circumstances, as set forth in the new Labor-Management Relations Act. For that reason, I would suggest to you that it is highly inadvisable to undertake to write a guarantee of this sort in constitutional law.

I would like to point out, also, that ever since the National Labor Relations Act was put on the book of federal statutes, there has been a suggestion made to the Legislature of the State of New Jersey that this right shall be guaranteed through statute, and each year the people through their elected representatives have seen fit to omit a guarantee of that sort. I suggest to you further, that it is inappropriate to include in the proposed Constitution a legislative guarantee of this sort which the Legislature, to date, consistently has failed to put into statute law.

CHAIRMAN: Are there any questions from members of the Committee? . . . I guess there are no questions, Mr. Torrey. Thank you.

Mr. Herbert Voorhees.

MR. HERBERT VOORHEES: My name is Herbert Voorhees. I am President of the New Jersey Farm Bureau.

Mr. Chairman, since I had such short notice, I have not come prepared with a statement. I will make some very brief remarks, mainly in reiteration of some of the statements that we've already

made through papers and briefs presented to your Committee and other Committees.

One point that I do want to discuss today, and briefly, is the proposed amending process which you have submitted in your Committee Report. I can appreciate as well as all of you people that we have amended our Constitution a limited number of times in the last 103 years. Perhaps we have amended it the needed number of times.

Let's go back farther than 103 years ago and let's think of the history of the world and see what's happened to a lot of folks in the meantime. Then we draw towards the very modern conclusion on what has happened to people who have paid little attention to people.

I will refer to our system of government here, where we have the two houses both in our State Government and our National Government. It is true, as was said this morning, that a small, a very small, percentage of people at times do have control of legislation. I refer to the Senate. Perhaps the 9 or 10 or 11 counties, when they meet in session in Trenton, do have a very powerful influence upon the legislation passed. The same thing applies to a greater and more exaggerated extent on a national level. The Senator from Nevada, or the two Senators from Nevada, perhaps represent one-tenth the number of people that any Congressman from the State of New Jersey represents. However, it has been a pretty successful program. It's the most stable form of government and has the outlook of remaining that way.

Now, let me recall to your minds some of the things you read, even before you were of voting age, in the histories of governments of the world. The one outstanding factor, I am sure you will agree with me, is that whenever rural interests were neglected, when the producers of the agricultural commodities were not given a bargaining power with the rest of the people, regardless of their numbers, government itself fails, regardless of its type.

By nature, and by nature alone, there is a philosophy which is developed and remains and runs concurrently with those who are close to the soil. It's a philosophy that will perpetuate not only government but life.

Even though I speak humbly and as a farmer, as head of an organization which I feel has considerable respect not only in this State but in this Nation, I want to remind you men of the Committee, members of the Convention, that whatever you do, don't fail to recognize this one very salient point: If you deny to the people in rural areas, regardless of their numbers, a bargaining power in legislation constitutionally, then we will have lost what has been gained over a period of 103 years.

We have stated time and time again, and have suggested, that amendments be made through the proper procedure. It would be unnecessary and it has been felt unnecessary on the part of farmers of New Jersey that a special election should be called to consider amendments to the Constitution. We have recommended that it be changed so that they could be considered at a general election. I was quite surprised when I read your report when you went so far away from our present point or position, where your Committee has recommended that by a three-fifths vote of both Houses, the Governor concurring, the question will be presented to the people at the succeeding general election.

I am not so sure that the rural people of New Jersey will subscribe to it. I am sure we do not want to make it impossible or prevent any possibility of a change, if we need modernization. However, the one thing that we are concerned about is that if we depend entirely upon majorities, majorities have been known to make a lot of mistakes. We have a check and balance system in Trenton. We've had one in Washington. Both have worked. If we amend the Constitution too easily, it will not be long before the majority will make a serious mistake and deny to rural people this bargaining power. It will be a natural mistake. If the people of New Jersey, the urban people, if you please—I say it with considerable respect—the urban people will make the mistake of tearing down our two-house system if you make the Constitution too easily amendable. That will be the ultimate result. It has been the result in every farm nation, not in our system of government, but where rural people were denied that power.

It seems to be, as I have referred to it, a very natural condition. When I speak of natural condition, if I wanted to go further up the ladder, I would refer to God. It is very apparent from the things that have gone on in this world in the last 30 or 40 or 50 years that this great State of New Jersey, which may take the lead in revising constitutions, should watch out. Let's go in the right direction.

Thank you, sir.

CHAIRMAN: Thank you, Mr. Voorhees . . . Are there any questions from members of the Committee?

If not, at this time we will hear from Jesse Moskovitz.

MR. JESSE MOSKOVITZ: I speak for the American Jewish Congress which is affiliated with and collaborated with the Joint Committee on Constitutional Bill of Rights in suggesting certain additions to the Bill of Rights of the proposed New Jersey State Constitution.

I realize that it's a very hot day and you people have been most patient in listening to all the speakers who have been here today. I also realize that most of the points, in fact all of the points that I

wish to make, have already been raised. So I want to be very brief in reiterating them and presenting the point of view of the American Jewish Congress.

First, I want to say that I feel that your Committee probably has the most important function of any Committee in this Convention. A Bill of Rights is the very essence of any Constitution. Just a slight glance at our constitutional history will remind us that our present excellent Federal Constitution could not have been adopted had it not been for the agreement by the founders that they would include the first ten amendments which guaranteed our rights.

Might I also point out that the men who drew the 1844 Constitution, which we are about to revise, thought the Bill of Rights so important that they included it in their first Article in the Constitution? Therefore, I say that when you go about drawing up a Bill of Rights, you are performing perhaps the most important function of any Committee or any body in this Convention.

I want to say on behalf of my organization that we feel that the Bill of Rights as drawn by the 1844 Convention was an excellent one. As a matter of fact, as far as it goes, the New Jersey Bill of Rights is one of the best in the country. But the 1844 Constitution, may I remind you, was legislated for a State that bears no relation at all to the State we have today, except that New Jersey is on the same spot in the universe. They drew a Constitution for a population of three or four hundred thousand which was racially homogeneous, religiously homogeneous, and primarily agricultural. Since that time the entire character of our State has changed. Instead of being racially homogeneous, we represent practically every race, color and religion on the face of the earth. Instead of being primarily agricultural, New Jersey stands in the forefront of the industrial states of this Union. I submit that in preparing a new Constitution of the 20th Century, we need a 20th Century Bill of Rights which will guarantee those rights which are important to people living in the industrial society, a bill which a society of so many various races and creeds needs in order to give it the rights which the 1844 Constitution so effectively gave to the people living in the State of New Jersey in 1844.

Now, that's all I want to have to say regarding the philosophy behind our proposed changes in the Bill of Rights. Enough has been said about the various provisions which the Bill of Rights should spell out.

I want to reiterate what has been said before. No generalizations are sufficient. We feel that these matters of civil rights are not something that can be left to statute. We feel that they are important enough to be included in the fundamental law. There is no more reason why the right to employment, the right to education, the

right to housing, the right to accommodations in public places of amusement and recreation, should be left out of the Constitution and left to subsequent Legislature, then we should leave out the right of freedom of speech, because it is as essential to the various groups in this State who are being discriminated against that these provisions be guaranteed to them in the Bill of Rights. When I speak of minorities, I want to remind you people that we are all minorities. Whether we are white or black, whether we are Protestant, whether we are Catholic, whether we are Jewish, we all represent minorities, and the minorities that I speak for in the aggregate actually constitute the vast majority of people in this State.

I want to take just a few minutes to point out how we feel we can implement these rights which we feel are vital to the Constitution. I am referring to paragraph 5-A. We suggested, in connection with the Joint Committee on Constitutional Bill of Rights, a new paragraph to guarantee these rights in our Constitution. Now I'll refer you to the exact wording because I think if you will follow it you will see that it provides everything that has been mentioned here today, and that effectively guarantees those rights. First we say that (*reading*):

"No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty or property without due process of law."

Those of you who are lawyers or who know anything about the Constitution are very familiar with that clause because it is an exact replica of the 14th Amendment to the United States Constitution, and we feel that it's important enough that that same right of due process be spelled out in our constitutional law and be the law of the State, and not be dependent upon the Federal Constitution.

Now I proceed (*reading*):

"Neither the State nor any political subdivision or agency thereof nor any person, group, association, corporation or institution shall subject any person because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights."

I want to point out to you that while the State by law in many cases is enjoined from denying civil rights to persons, as a matter of fact private individuals have been permitted by decisions of our courts to deny those very rights which the State declares are fundamental. I refer you to the first paragraph of Article I, the suggested Article on Rights and Privileges (*reading*):

"All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property" . . . (*may I repeat "acquiring, possessing, and protecting property"*) . . . "and of pursuing and obtaining safety and happiness."

Despite this provision, may I point out to you gentlemen that there are large numbers of people in this State who do not have the

right, and that right has been denied to them by the courts, of acquiring, possessing and protecting property? Our courts have consistently upheld the restrictive covenants which prohibit individuals who wish to buy and sell property from doing so, merely because one of the parties to the transaction is a member of a proscribed class; he's a Negro, he's Jewish, he's Italian, he's Asiatic, or what-have-you. We are permitting private individuals to deprive citizens and residents of this State of their constitutional rights guaranteed to them by this Constitution, by their own private edict.

Now, I say that that is not right; that's not just. If we want really to have a Bill of Rights that means something, then no private individual should have the right to do what is proscribed for the State. I go further to say this particular provision which I read now specifically alludes to that (*reading*):

"and any writing, agreement, or practice in violation hereof shall be void and unenforceable . . ."

In other words our courts are not going to enforce any right, or rather deny any right, by virtue of any private agreement which the State itself cannot deny to individuals in the State.

We go further. We specifically provide those civil rights we are talking about. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination because of race, color, religion, or national origin, in obtaining employment or education by other than religious corporations or associations—and I want to point out to you that we do not deprive the right of sectarian institutions, which are supported by funds from particular religious groups, of choosing their students from among members of those religious groups—by other than religious corporations or associations, in obtaining public accommodations and acquiring or enjoying any property and in engaging in any business, trade or profession, or otherwise pursuing a livelihood.

Right here I want to meet an objection which was made by the Chairman earlier in the proceedings when he suggested that the enumeration of those civil rights may be construed to prohibit the Legislature in the future from enlarging upon those rights. This suggested Article meets that because it specifically provides, and I read:

"and such other civil rights as may be recognized by statute or common law."

I think that effectively meets your strictures on that point, Mr. Chairman.

We respectfully submit that this is an effective way of achieving what has been spoken about here all afternoon. We heartily recommend it to you for your consideration and for your adoption.

Now, I want to allude very briefly to a few other points with re-

spect to the rights and privileges on which my organization has taken a stand.

Number one, with respect to the right of collective bargaining. We wholeheartedly endorse the provision in the Constitution that the right of collectively bargaining be guaranteed. We wholeheartedly agree with the objections made previously that public employees should not be second-class citizens and that they should have the right to bargain collectively. By bargaining collectively we do not necessarily mean the right to strike.

I want to point out to the previous speaker that he was in error when he said that since the first labor union was organized, they have been permitted to function. I am sure that anybody familiar with the legal history of labor knows that 100 years ago the effort of two or more persons to join together in order to improve their conditions was construed as a conspiracy, indictable, for which they could go to jail. So that we need a guarantee of that right. I say that we also need a guarantee that ten years from now, regardless of what the speaker for the small businessmen's committee may say, that that right will be protected. Because, if conditions are very different ten years from now, the only direction in which these conditions can change will be in the direction which will destroy our democracy. The only type of government which denies those rights to bargain collectively, which are inherent in the very democratic process, is a government of fascism. It is because we want to preserve and protect our democratic way of life that we want this guarantee embodied in the Constitution and not to be subjected to the whim of any Legislature which in a moment of hysteria may attempt to vote us out of a democracy and into a totalitarian form of government.

I want to allude briefly to the question of right to amendment. The speaker for the Farm Bureau Federation suggested that possibly the fact that the Constitution has been amended only four times since it was adopted indicates, and I quote, that it was amended "the needed number of times." If that is the case, may I respectfully ask you people what are you doing here? What is the point of a Constitutional Convention to change the entire Constitution if it has been amended the needed number of times and meets the needs of the people today? It is quite obvious that it doesn't, and that is the reason why you people are sweating out this hot summer here in New Brunswick rather than spending it in the mountains or at the shore.

I say that it is important that the Constitution be so drawn as to permit it to be amended, to be revised to meet the changing times.

We respectfully suggest that every 20 years the people be allowed to vote on whether or not they desire a constitutional convention.

I might point out that the State of New York, which certainly is no more radical, no more oblivious of basic rights than we are, has that constitutional provision, and when I last heard reports, the State of New York was doing fairly well. I don't think that the State of New Jersey will be any the worse for it. When that same speaker alluded to bargaining power in referring to the right of a minority to prohibit amending the Constitution, he reminded me of another minority power which has been causing so much confusion and so much opposition in the United Nations—the right of veto which most people in this country are so strenuously objecting to on the ground that it gives the minority the right to thwart the will of a majority.

I respectfully suggest that no small minority or no minority should be allowed to thwart the will of the majority of the people of this State. We still believe in the inherent dignity of each individual as the basic precept upon which our whole civilization is based and upon which our Constitution rests. We have the right to trust and depend upon each individual being given the right to have his say on anything as fundamental as the Constitution by which he lives and, we hope, prospers.

I respectfully submit these suggestions to your Committee and I know that you are going to give them your earnest consideration. I trust that you will see fit to join with us and make this Constitution one that meets the needs of the 20th Century, even, as I said before, the present Constitution met the needs of the 19th Century.

Thank you.

CHAIRMAN: Just a minute! Do any of the members of the Committee have any questions? . . .

I know you won't mind my making the observation for the record on the word "strictures" which you used. To me that refers to a tirade—

MR. MOSKOVITZ: Oh, no, I didn't meant it that way.

CHAIRMAN: I merely made an observation or a comment, if you will amend that word please.

MR. MOSKOVITZ: I will be more than glad to have the word "stricture" stricken and in its place say "comment." I didn't mean it in that way at all.

CHAIRMAN: One other point, on the right of public employees to bargain collectively. How do you feel about this situation? You have an absolute right of public employees to bargain collectively with some representative of the state authority and they reach an impasse. Don't you think, in the actual fact of giving the right to bargain collectively absolutely to public employees, that we—this is a personal observation now, maybe this isn't a question—would be reducing the State, the collective authority of the majority which

you have emphasized should prevail, to that of an equal bargaining partner with a small segment of the State, the one particular group in the public authority?

MR. MOSKOVITZ: No, I don't think so because we are speaking not of the right to bargain with the State as such. Quite the contrary. I think there is too much of a tendency to confuse any particular public administrator, or as he has often contemptuously been referred to as a bureaucrat, with the State itself. When we refer to collective bargaining we mean the right of any group, say, working in a public housing project—for instance, I come from the City of Jersey City, the right of those working in Lafayette Gardens—to bargain with their supervisor regarding the conditions of their employment, regarding such grievances as they may have as to the treatment they are getting. I don't think that's bargaining with the public or reaching an impasse. As a matter of fact, it has already been suggested that the area of bargaining cannot go beyond the power given to that particular individual by the statute under which he operates.

I say that a public employee, as well as a private employee, is a human being, and because he accepts public employment he does not become a second-class citizen. He has the right to speak up when he is deprived of fair treatment in his job. He should have a right to complain about the sanitary facilities under which he works, about the assignment of jobs, about other conditions which arise, as well in public employment as in private employment. We are not bargaining with the State, we are not attempting to infringe upon the sovereign power of the State. Let's not confuse individual administrators with the supreme sovereign power of the State. We don't want to do that and we don't think we are doing that.

CHAIRMAN: Well, it's just my feeling that the public administrator is representing the collective authority of the State, and if you reduce him to an equal bargaining power in a collective bargaining agreement, then you are infringing on the state sovereignty.

MR. MOSKOVITZ: We are not reducing him to an equal bargaining power. We say that he should be required to meet with a representative of his employees and to discuss with him the conditions under which they are employed and to redress any grievances that they may have.

MR. PURSEL: How can anyone other than equals bargain?

MR. MOSKOVITZ: What do you mean, "other than equals"?

MR. PURSEL: Doesn't bargaining infer that they are on an equal basis?

MR. MOSKOVITZ: Ordinarily in private employment, yes, but not necessarily in public employment. We realize that a public administrator is restricted by the terms of his reference, by the terms

of the act or the regulations under which he administers a particular project.

MR. PURSEL: You use a phrase "second-class citizen" in relation to public employees. There are different privileges that different groups get, such as, for instance, members of the Bar who take an examination and become officers of the court. They acquire certain privileges that other people don't have. Will it follow from that, then, that other people are second-class citizens?

MR. MOSKOVITZ: No, quite the contrary. They achieve certain privileges because they have met certain standards and qualifications, and they have passed the necessary examination and their characters have been attested to as being such as should permit them the privilege of being a member of the Bar.

CHAIRMAN: Any other questions? . . . Thank you Mr. Moskovitz.

We have one more witness, I believe, Mr. Alberto Collena.

MR. ALBERTO COLLENA: Committee members, delegates and public:

In order to have a more perfect method of insuring the continued liberty, happiness, and prosperity of law-abiding citizens, I recommend the inclusion of the following five items in the Constitution (*reading*):

"First: 'No person shall be imprisoned in a mental institution without benefit of trial by jury in one of the constitutional courts.

No person shall be brought to trial for possible imprisonment in a mental institution except on the basis of a charged law violation.

No person shall be sentenced to an indefinite term in a mental institution.'

Second: 'Circumcision of human babies is abolished.'

Third: 'Employee representation on the board of directors, or the equivalent, of private business corporations pertaining to or similar language, shall be provided for.'

Fourth: 'Each citizen has the right to employment via wage hour laws.'

Fifth: 'Every so-called official of the so-called Communist Party and other tyrannist organizations is declared a traitor and shall be dealt with accordingly.'"

The foregoing recommendations embody the spirit of the Constitution of the United States of America. Thank you . . . Any questions?

CHAIRMAN: Any questions of Mr. Collena? . . . Thank you very much, sir.

Is there anyone else in the room who wishes to be heard by the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions?

(Silence)

CHAIRMAN: I'll ask the Committee to please wait very briefly and have a short conference.

MR. PARK: I move we adjourn.

(Motion to adjourn seconded and carried)

COMMITTEE
ON
RIGHTS, PRIVILEGES,
AMENDMENTS
AND MISCELLANEOUS
PROVISIONS
APPENDIX
TO
PROCEEDINGS

REPORT OF THE COMMISSION ON REVISION
OF THE NEW JERSEY CONSTITUTION

(Submitted to the Governor, the Legislature and the People of
New Jersey, May 1942)

(EXCERPTS RELATING TO THE ARTICLES ON RIGHTS AND PRIVILEGES,
STATE GOVERNMENT, ELECTIONS AND SUFFRAGE, AMEND-
MENTS, AND GENERAL PROVISIONS)

SUMMARY AND EXPLANATION

* * * *

ARTICLE I
RIGHTS AND PRIVILEGES

Summary:

A new paragraph guarantees every citizen or taxpayer the right to restrain any violation of the Constitution. There is no other substantial change.

Explanation:

No change has been made in the time-tested provisions of the Bill of Rights, with the exception of the addition of a provision guaranteeing every citizen and taxpayer the right to restrain any violation of the Constitution. Any citizen who believes an act of the Legislature authorizing an expenditure of public money violates the Constitution cannot now prevent the expenditure, unless he can show that the injury to him is different in kind or degree from what every other citizen suffers. The new provision wipes out this legal impediment and brings the State government under effective public scrutiny and control.

ARTICLE II
STATE GOVERNMENT

Summary:

1. All powers of government, except as expressly limited by the Constitution, shall be embraced within the legislative power.
2. The procedure of administrative agencies shall, where private rights are concerned, conform to published regulations which, so far as practicable, shall be uniform.

Explanation:

The Legislature is definitely freed of any implication that, like the Congress, it cannot serve the people unless the power it wishes to exercise is spelled out in the Constitution. Our present theory of American state government, that the state constitutions, unlike the Federal document, do not grant but merely limit sovereign powers, is given formal expression by the new clause.

In order to serve the people effectively administrative agencies

which combine all three types of powers have become a permanent part of the machinery of government. Viewed in the light of the development of administrative agencies, the threefold division of powers has been saved only through intelligent judicial interpretation. In recognition of this situation, the new clause sets up fundamental standards of responsibility that the people demand of such agencies. The new clause guarantees, first, that the public business handled by administrative agencies will be subject to uniform published procedures barring secret and irregular transactions, and secondly, that all citizens shall receive fair and uniform treatment from such agencies.

* * *

ARTICLE VIII ELECTIONS AND SUFFRAGE

Summary:

1. Elective state officers shall be chosen in odd-numbered years.
2. All questions upon which a vote of the people may be taken shall be submitted at a general election, or in the case of local propositions, at a regular county or municipal election.
3. All qualified voters who are properly registered shall be entitled to vote for offices that are elective by the people and upon all questions which may be submitted to the people. Men in the armed services shall be provided with means for casting absentee ballots.

Explanation:

The provisions of the revised Constitution which relate to elections are restricted to the most fundamental standards. Many of the changes are clarifications of this kind. The requirement which, in effect, keeps questions from being submitted at a special election is a departure from past practice. It was once thought that the voters' attention could be concentrated on a particular question by holding a special election. Experience has proved, however, that the added and substantial expense of special elections is unwarranted because all such elections have been but lightly attended by voters. The new requirement of submission at general elections will assure that the true sense of the greatest possible number of qualified voters will be taken on public questions.

ARTICLE IX AMENDMENTS

Summary:

1. Proposed amendments shall, if approved by a vote of two-thirds of the members of each house of the Legislature, be submitted to the people at the next general election to be held not

less than three months after such approval by the Legislature.

2. The five-year limitation on resubmission of amendments, contained in the present Constitution, is retained, but it is clarified so as definitely to apply to the same amendment or one dealing with the same subject matter, which may not be submitted more than once in five years.

Explanation:

The new amending provision requires passage of proposed amendments by one Legislature instead of two, as in the past, but a two-thirds vote is required instead of the simple majority now used. The difficulty of sustaining interest in a proposal through two Legislatures has caused many needed amendments to fail in the past. The old practice apparently was based upon the notion that the people could commit their representatives on pending constitutional amendments at the time that the second Legislature was being elected. This is completely contradictory to modern theories of a constituent assembly, as well as obviously impractical in light of the election of only one-third of the Senators each year and of the complex issues upon which legislators would have to commit themselves without reference to any given piece of legislation. Since the people are the ultimate sanction for any change in the fundamental law, the procedure which precedes their action should, in the democratic process, be made as simple as possible. In order to guard against thoughtless submission of an excessive number of amendments, however, the two-thirds vote will be advantageous.

Elimination of the existing requirement of a special election on amendments will save the people \$700,000 each time amendments are submitted, as well as assure consideration by the largest possible proportion of the voters at a general election. Experience in this State has shown that a majority of the people have never participated in a special election, however vital the issue may have been. The change to general elections is made in recognition of this historical fact.

ARTICLE X—ARTICLE XI
GENERAL PROVISIONS—SCHEDULE

Summary:

1. The new Constitution is made to take effect on January 1, 1943, and the Legislature is required to pass all laws that may be necessary to place it in full operation.

2. Transition of offices and agencies, personnel and laws from the old Constitution to the new is effected.

Explanation:

The provisions of Article X are of a technical nature and are required by good legal practice. Article XI is of a temporary nature

and relates to transitional matters, such as the transfer of officers and employees, the displacement of existing courts by the new court system and special effective dates for various provisions involving preparatory steps.

* * *

TEXT OF PROPOSED REVISED CONSTITUTION

Preamble—We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE I

RIGHTS AND PRIVILEGES

1. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

5. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be

acquitted; and the jury shall have the right to determine the law and the fact.

6. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

7. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six persons.

8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

9. No person shall be held to answer for a capital or other infamous crime, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

10. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

11. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

12. The military shall be in strict subordination to the civil power.

13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in a manner prescribed by law.

14. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

15. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

16. Private property shall not be taken for public use without just compensation. Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation.

17. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Any citizen or taxpayer may restrain the violation of any provision of this constitution by a suit with leave of the Superior Court upon notice to the Attorney-General.

20. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE II

STATE GOVERNMENT

1. The functions, powers and responsibilities of the government of this State shall be divided among three distinct branches—the Legislative, Executive and Judicial. No person belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

2. All powers of government which are not by this Constitution vested in the Executive or Judicial branches, nor in conflict with rights reserved by the people, nor specifically proscribed to the Legislative branch, shall be embraced within the legislative power and may be exercised in such manner as may be provided by law.

3. The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character.

* * *

ARTICLE VIII

ELECTIONS AND SUFFRAGE

1. General elections shall be held annually on the first Tuesday after the first Monday in November. The Governor, members of the Legislature and such local officers as may be provided by law shall be chosen at a general election.

2. All questions which may be subject to a vote of the people shall be submitted at a general election, or, in the case of local propositions, at a regular county or municipal election.

3. Every citizen of the United States who shall have attained the age of 21 years, been a resident of this State one year and of the

county in which the vote is claimed five months, next before an election, and who shall have been duly registered as a voter pursuant to law, shall be entitled to vote therein for all officers that are now or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. No pauper, idiot, insane person, or person convicted of a crime which at common law would have excluded him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector. Persons convicted of bribery may be deprived by law of the right of suffrage.

5. No person shall, for the purpose of the suffrage, be deemed to have become a resident of, nor to have abandoned prior residence in this State or any county thereof by reason of his presence in or absence therefrom during active service in the military or naval service of this State or of the United States.

6. The Legislature shall provide by law the manner in which, and the time and place at which ballots may be cast by electors absent in the actual service of the military or naval forces of this State or of the United States, and for the return and canvass of such absentee votes in the election district in which the voters respectively reside. The Legislature may also provide for voting by other absent electors and for the like return and canvass of their votes.

7. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the privilege of the suffrage and for the registration of all qualified voters. Registration shall be upon personal application in the case of the first registration of any voter, and shall remain effective for such period as the Legislature may prescribe.

ARTICLE IX AMENDMENTS

1. Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be approved by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon.

2. The Legislature shall publish any approved amendment once in at least one newspaper of each county, if any be published therein, not less than three months prior to its submission to the people.

3. Approved amendments which have been published as required by this section shall be submitted to the people at a general election held not more than four months after the date of publication thereof. Submission shall be in such manner as the Legislature may prescribe.

4. If a majority of the qualified voters who vote thereon shall

approve and ratify any amendment, it shall become part of the Constitution.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly. The same amendment or one effecting the same change in the Constitution shall not be submitted to the people more often than once in five years.

ARTICLE X

GENERAL PROVISIONS

1. The provisions of this Constitution shall be self-executing, to the fullest extent that their respective natures permit. Legislation shall be enacted in furtherance of their purposes and to facilitate their operation.

2. Any recital of specific functions, powers or duties in this Constitution shall not be construed in any manner to restrict by implication any general functions, powers or duties of government not inconsistent therewith.

3. The seal of the State shall be kept by the Governor or person administering the government, and used by him officially, and shall be called the great seal of the State of New Jersey.

4. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to, Greeting." All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State the government and dignity of the same."

5. This Constitution shall take effect on the first day of January, one thousand nine hundred and forty-three, subject to the provisions of the schedule hereinafter set forth.

ARTICLE XI

SCHEDULE

SECTION I

General

1. This Constitution shall supersede the Constitution of 1844 as amended, and the Legislature shall enact all laws necessary to make this Constitution fully effective.

2. No office, position or employment existing on the effective date of this Constitution shall be altered or abolished by virtue of the adoption hereof, except as otherwise provided herein.

3. All persons holding office upon the effective date of this Constitution shall continue in office and to exercise their respective

powers and duties except as otherwise provided herein. The adoption of this Constitution shall not cause the term of office of any incumbent to be either extended or reduced, except as otherwise provided herein.

4. All the statutory and common law in force on the effective date hereof, which is not inconsistent with this Constitution, shall remain in full force and effect until it expires by its own limitation or is altered or repealed by law. All causes of action, indictments, prosecutions, rights, claims, demands, duties and obligations, of individuals and of bodies corporate, and of the State and all charters and franchises shall continue unabated by the adoption of this Constitution. All indictments heretofore or hereafter found for any crime or offense committed before the adoption of this Constitution may be proceeded upon as if no change had taken place.

* * *

PROPOSED REVISED CONSTITUTION OF 1944

(Agreed upon by the 168th Legislature and submitted to the electorate on November 7, 1944, and defeated)

(EXCERPTS RELATING TO THE ARTICLES ON RIGHTS AND PRIVILEGES,
DISTRIBUTION OF THE POWERS OF GOVERNMENT, ELECTIONS AND
SUFFRAGE, AMENDMENTS, AND GENERAL PROVISIONS)

Preamble—We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE I**RIGHTS AND PRIVILEGES**

1. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

5. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall

be acquitted; and the jury shall have the right to determine the law and the fact.

6. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

7. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men.

8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

9. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy; or in the militia, when in actual service in time of war or public danger.

10. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

11. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

12. The military shall be in strict subordination to the civil power.

13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in a manner prescribed by law.

14. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

15. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

16. Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made.

17. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. No county, city, borough, town, township, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

20. No donation of land or appropriation of money shall be made by the State or any municipal corporation to or for the use of any society, association, or corporation whatever.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE II

DISTRIBUTION OF THE POWERS OF GOVERNMENT

1. The powers of the government shall be divided among three distinct branches, the Legislative, Executive, and Judicial. No person or persons belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

* * *

ARTICLE VIII

ELECTIONS AND SUFFRAGE

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen at general elections.

2. All questions, which are to be submitted to a vote of the people of the entire State, shall be submitted at general elections.

3. Subject to the provisions of this Article, every citizen of the United States who shall have attained the age of 21 years, been a resident of this State one year and of the county in which the vote is claimed five months, next before an election, and who shall have been duly registered as a voter pursuant to law, shall be entitled to vote therein for all officers that are now or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. No pauper, idiot, or insane person shall enjoy the right of an elector.

5. Persons may be deprived by law of the right of suffrage because of conviction of crime.

6. No person shall, for the purpose of suffrage, be deemed to have become a resident of, nor to have abandoned prior residence in, this State or any county thereof by reason of his presence therein or absence therefrom during active service in any branch of the military or naval forces of this State or the United States.

7. No elector in active service in any branch of the military or naval forces of this State or of the United States shall be deprived of his vote by reason of his absence from his election district.

8. The manner in which and the time and place at which ballots may be cast by electors absent during active service in any branch of the military or naval forces of this State or of the United States, and the manner of the return and canvass of such absentee votes, shall, at all times, be provided by law.

ARTICLE IX AMENDMENTS

1. Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be agreed to by three-fifths of all the members of each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and shall be published once in at least one newspaper of each county, if any be published therein, not more than four months, and not less than three months, prior to its submission to the people.

2. Such amendment or amendments shall be submitted to the people at the general election next succeeding the publication, in such manner as the Legislature shall prescribe.

3. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

4. If at the election the people shall approve such amendment or amendments, or any of them, by a majority of the legally qualified voters of this State voting thereon, such amendment or amendments so approved shall become part of the Constitution.

5. If at the election the people shall not approve any such amendment, no specific amendment to effect the same or substantially the same change in the Constitution shall be submitted to them before the fifth general election thereafter.

ARTICLE X GENERAL PROVISIONS

1. The provisions of this Constitution shall be self-executing, to the fullest extent that their respective natures permit. Legislation shall be enacted in furtherance of their purposes and to facilitate their operation.

2. The word "day" when used in this Constitution means a calendar day.

3. The seal of the State shall be kept by the Governor, or person administering the government, and used by him officially, and shall be called the great seal of the State of New Jersey.

4. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor, or person administering the government, and countersigned as may be provided by law, and shall run thus: "The State of New Jersey, to, Greeting." All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State, the government and dignity of the same."

5. This Constitution shall take effect on the second Tuesday in January, one thousand nine hundred and forty-five, except Article V which shall take effect on the first day of November, one thousand nine hundred and forty-five, all subject to the provisions of the schedule hereinafter set forth.

ARTICLE XI SCHEDULE

SECTION I

1. This Constitution shall supersede the Constitution of 1844 as amended, and the Legislature shall enact all laws necessary to make this Constitution fully effective.

2. The adoption of this Constitution or the taking effect thereof or of any Articles thereof shall not of itself affect the tenure, term or compensation or any person holding any state civil office or state position or employment at the time when the same is adopted or takes effect, except as provided in this Constitution.

3. All militia officers in office when this Constitution takes effect shall continue to exercise their respective commissions and powers until otherwise provided by law.

4. All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force and effect at the time this Constitution or any Articles thereof take effect shall remain in full force and effect until they expire or are superseded, altered or repealed. All writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unabated and unaffected notwithstanding the taking effect of any of the Articles of this Constitution, and all indictments which have been found, for any crime or offense committed, before the taking effect of this Constitution or any Article thereof may be proceeded

upon notwithstanding the taking effect thereof. The Supreme Court shall make such general and special rules and orders as may be necessary for the transfer of all suits, proceedings and indictments to the appropriate court and section thereof. Indictments may be found and proceeded upon, after the Judicial Article of this Constitution takes effect, for crimes or offenses committed before said Article shall take effect, in the court succeeding to the jurisdiction of the court in which they could have been found and proceeded upon if such Article had not taken effect.

* * *

LETTER AND PROPOSAL OF ALLIED THEATRE
OWNERS OF NEW JERSEY, INC.

ALLIED THEATRE OWNERS OF NEW JERSEY, INC.
208 Ferry Street
Newark, N. J.

July 2, 1947

Mr. Oliver F. Van Camp, Secretary,
New Jersey Constitutional Convention,
New Brunswick, N. J.

Dear Sir:

I am enclosing a proposed amendment to Article I, section 5 of the New Jersey Constitution for consideration by the Convention. The Allied Theatre Owners of New Jersey present this amendment, prepared after most careful and deliberate thought, in the hope that the delegates will recognize the need for incorporating in the revised Constitution a clause establishing freedom of speech *by any mode of communication*.

When the present Constitution was adopted, the motion picture had not yet been invented and no provision was made to protect this means of communication. We deem it essential that the graphic or visual method of communication be given the same protection that is given to the written or printed word.

Very truly yours,
GEORGE GOLD,
Chairman of Legislative Committee

CLAUSE ESTABLISHING FREEDOM OF SPEECH BY ANY
MODE OF COMMUNICATION

That no law be passed impairing the freedom of speech by any mode of communication; that every person shall be free to say, write, publish or otherwise communicate by any method or in any form whether written, printed, graphic or visual whatever he will, on any subject, being responsible for all abuse of that liberty. In all prosecutions of indictments for libel, the truth thereof may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

LETTER OF AMERICAN FEDERATION OF
HOSIERY WORKERS, BRANCH 166

July 15, 1947.

John F. Schenk (Hunterdon),
Chairman, Committee on Rights, Privileges,
Amendments and Miscellaneous Provisions,
Constitutional Convention,
New Brunswick, New Jersey.

Dear Sir:

We of the American Federation of Hosiery Workers, Branch 166, Wildwood, New Jersey, request that you support the following provisions changing the Constitution of New Jersey:

1. "The right of labor to organize and bargain collectively shall not be impaired."

2. No person may be subjected by any government body, private individual, group or institution to discrimination because of his race, color, religion or national origin. The civil rights protected by this clause include the right to be free from discrimination in obtaining employment, education, public accommodations, acquiring or enjoying property, and others.

3. Property taken over by the State for any purpose, including housing, "shall be enjoyed without discrimination."

4. Tax exemption shall be denied to any charitable or educational institution, except religious or sectarian institutions, which practices discrimination.

Also urge Committee's support of the following measures to provide for easier amendment of the Constitution in the future:

1. The people should be able to initiate amendments. Where 100,000 voters in the State, including at least 1,000 from each of eleven counties, sign a petition urging an amendment, the proposed amendment should be submitted to a vote of all the people at the next general election.

2. Amendments adopted by both House of the Legislature at one session should be submitted to a vote at the next general election.

3. A proposed constitution amendment approved by only one House of the Legislature (and not the other) should be submitted to the people, if so ordered by the Governor.

4. The question of revising the entire Constitution should be submitted to the people every 20 years.

Thanking you for your support of these fair and necessary changes.

Yours truly,

MAY WARNER, *Recording Secretary*

Branch 166, AFHW, 3306 Pacific Avenue Wildwood, New Jersey.

LETTER OF AMERICAN LEGION
DEPARTMENT OF NEW JERSEY

July 15, 1947.

Hon. John F. Schenk,
Chairman of Committee on Rights, Privileges,
Amendments and Miscellaneous Provisions,
Constitutional Convention,
Flemington, New Jersey.

Dear Sir,

The American Legion, Department of New Jersey, representing approximately ninety thousand (90,000) veterans in the State of New Jersey, respectfully requests that the Constitutional Assembly insert some provision in the new Constitution for the State of New Jersey that will take away from existing and future legislation any taint of unconstitutionality.

Legislation benefiting veterans now on the statute books of the State of New Jersey may be divided into three types of legislation: (1) tax exemption legislation providing for tax exemptions for individuals and tax exemption legislation providing for veterans' organizations; (2) preference legislation giving preference to veterans in examinations conducted by the Civil Service of the State and other legislation giving preference to veterans in appointment to office in municipalities not governed by Civil Service; (3) privileged legislation such as pensions for veterans, special pensions for the blind and paraplegic veterans, bonuses, veterans absent from public employment to attend conventions, real estate brokers' licenses for disabled veterans, providing for the giving of Statutes and Law and Equity Reports to disabled veterans who are lawyers, use of buildings for veterans' organizations, allotment of funds for the education of war orphans, legislation affecting the exclusive sale of poppies and forget-me-nots, legislation providing for service medals, legislation providing for registration of graves, legislation permitting municipalities to advance monies to veterans' organizations for special purposes and all similar legislation.

Some of the legislation now on our statute books from a constitutional standpoint is good, some doubtful and some is absolutely bad.

Under the Constitution of 1844 no mention was made of veterans because at that time there were no large number of veterans nor any prominent veterans' organizations.

Today in drafting a new Constitution for the State of New Jersey it is absolutely necessary that the rights of veterans be protected. This protection can be accomplished in one of two ways:

1. By amending the tax clause to make legal the exemptions granted and those to be granted in the future; amending the Civil Service clause to provide the preferences already given to veterans and providing for any future preferences that the Legislature may grant, and the adoption of an additional clause that will take away the question of unconstitutionality from the types of legislation heretofore referred to as privileged legislation.

2. By the adoption of a new and dominant clause in the Constitution that will cover all preferences, privileges and exemptions now enjoyed by veterans through legislation and the protection of the same rights in future legislation.

The American Legion agrees with the theory that the Constitution should be a statement of principles and that no attempt should be made to legislate by language in the Constitution. The Legion also has confidence that any and all future legislative bodies will approach veterans' problems with fairness to the veterans and to the general public. We therefore recommend that the second course be adopted by your Constitutional Convention and recommend the following dominant article to be inserted in the Constitution as a separate Article. It must necessarily be dominant because if it is not many questions of construction will arise so the wording of this particular article must leave no room for doubt. We therefore recommend the following as a separate Article in the new Constitution:

"Notwithstanding anything in the Constitution contained the Legislature shall have the power to grant preferences, privileges and exemptions to persons serving or who shall have served in the Armed Forces of the United States of America in time of war, and to the dependents of such persons, as may be defined by it."

Respectfully submitted,

THOMAS E. DUFFY,

Department Judge Advocate

RESOLUTION OF
AMERICAN VETERANS OF WORLD WAR II,
NEW JERSEY STATE DEPARTMENT

WHEREAS, the people of the State of New Jersey, at an election held June 3, 1947, overwhelming approved the calling of a Constitutional Convention and elected delegates thereto; and

WHEREAS, heretofore veterans of all wars have been granted certain statutory exemptions and privileges, including civil service preferences, pensions and tax exemptions; and

WHEREAS, veterans of World War II, at great personal sacrifice to themselves, have preserved our democracy and the American way of life, and are therefore desirous of maintaining the benefits of said laws heretofore enacted for their protection in order that they may not be penalized by reason of their having devoted a period of their lives in the service of their State and Country; and

WHEREAS, we, AMVETS, American Veterans of World War II, Department of New Jersey, have formally met in executive session to consider the protection of the rights, privileges and immunities of veterans in the proposed revision of the Constitution of the State of New Jersey;

NOW, THEREFORE, BE IT RESOLVED by AMVETS, American Veterans of World War II, Department of New Jersey, that all of the foregoing be taken into consideration in the framing of said revised Constitution for the State of New Jersey and that provision be made therein empowering the Legislature of the State to enact such legislation as may be necessary and adequate for the continuance of said existing rights afforded to veterans in just recognition of their service to their State and Country; and

BE IT FURTHER RESOLVED, that AMVETS, American Veterans of World War II, Department of New Jersey, be given an opportunity to present and amplify the views herein expressed before the said Constitutional Convention or an appropriate committee thereof; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to the Chairman and to each delegate of the New Jersey State Constitutional Convention and to the public press.

We hereby certify that the foregoing is a true copy of a resolution adopted at a special meeting of the Executive Committee of AMVETS, American Veterans of World War II, Department of New Jersey, on June 4, 1947.

MORGAN J. NAUGHT,

Commander, Department of New Jersey

Attest:

WALTER B. GOLDEN, *Adjutant, Department of New Jersey*

MEMORANDUM OF JOHN E. BEBOUT, Esq.

EFFECT OF PROVISION FOR PERIODIC VOTE ON
CALLING CONSTITUTIONAL CONVENTION

Eight state constitutions have provisions intended to require periodic submission to the voters of the question whether or not to hold a constitutional convention: New Hampshire, every 7 years; Iowa, every 10 years; Michigan, every 16 years; Maryland, Missouri, New York, Ohio and Oklahoma, every 20 years.

An analysis of the history of constitutional revision in these states demonstrates the fact that the number of conventions does not increase in direct proportion to the facility with which conventions can be called.

1. *New York.* The 1846 New York constitution contained the provision for a periodic revision every 20 years if the question were approved by the voters. The question was submitted in 1866, 1886, 1914 (by virtue of legislative action), and automatically in 1936. The reason for the gap after 1886, when the question was submitted automatically, and 1914, when it was submitted by order of the legislature, was that the convention following the 1886 submission was delayed until 1894 due to a dispute between the governor and the legislature as to the method of electing delegates. Thus, the next mandatory date would have been 1916, but the legislature anticipated it by two years.

On each of these occasions, 1866, 1886, 1914 and 1936, the people voted for the convention. However, the people rejected the constitution proposed by the 1867 convention except for the judiciary article which was submitted separately. The people approved the constitution proposed by the convention of 1894. The constitution of 1915 was rejected and the convention of 1938 resulted in the adoption of some and rejection of other comprehensive amendments. According to leaders of civic organizations, the vote on the 1938 proposals was a very discriminating job.

At any rate, as far as New York State is concerned, while the people voted for a convention each time they had an opportunity, they were quite selective or discriminating in voting on the products of the convention.

2. *Ohio.* The automatic vote provision was incorporated in the Ohio constitution in 1912. The people voted against the convention in 1932 in spite of the fact that conservative civic organizations like the Citizens' League of Cleveland urged an affirmative vote. The vote will next occur in 1952. Civic forces in Ohio are already beginning to plan the careful campaign which they think will be necessary to induce the people to vote for the convention at that time.

3. *Michigan*. The Michigan constitution of 1850 authorized referenda on the question of holding a constitutional convention, both by legislative action at any time, and, as a result of a mandatory provision calling for a referendum, at 16-year intervals. There have been eight referenda—four as a result of each method. Only two conventions resulted from the eight votes. On three of the six other occasions, the vote for a convention exceeded that against, but fell short of the required majority of the total vote cast at the election. Of the five constitutions submitted to the voters during the life of the state, three were approved, two rejected.

The following letter from Professor Arthur Bromage shows that the last two proposals were defeated by substantial majorities of the people voting on the question:

"UNIVERSITY OF MICHIGAN
Department of Political Science
Ann Arbor

July 26, 1947

Dear Bebout:

I have your letter of July 23 in which you raise questions about the periodic vote requirements for a constitutional convention in Michigan. As to the record since the constitution of 1909, there have been two votes under the automatic provision. In 1926 the people rejected a call of a convention by a vote of Yes—119,491 and No—285,252. Again in 1942 the people rejected the call of a convention by a vote of Yes—408,188 and No—468,506.

I believe that objections to the automatic vote are not well taken. There are so many interests protected by modern state constitutions that there seems to be a natural tendency against the call of a constitutional convention. Certainly the people have the good judgment to turn down the call of a convention if they deem the time to be inappropriate. The great problem in Michigan has been in arousing the people with the need for constitutional revision.

Sincerely yours,

(s) Arthur W. Bromage
ARTHUR W. BROMAGE

AWB:nw"

4. *Missouri*. Two Missouri conventions have been held as a result of the automatic vote on revision provided for by a popularly initiated amendment adopted in 1920. The first submission of the convention question in accordance with the mandate of the amendment was in 1921, and the question was again submitted in 1942 (one year late). The people voted to call the convention both times. They rejected most of the work of the 1922-1923 convention, while they adopted the constitution proposed by the 1943-1944 convention. Both the favorable vote on the revision question in 1942 and the adoption of the constitution in 1945 were the result of vigorous, well-organized campaigns by cross-section citizen organizations.

5. and 6. *Iowa and Maryland*. Iowa has had a provision requiring submission of the question of constitutional revision ever since

1867. Yet neither state has had a constitutional convention since, due generally to the popular habit of voting "No" when the question comes up.

Note the following statements by Professor Herman H. Trachsel of the State University of Iowa and Professor Joseph Ray of the University of Maryland:

"THE STATE UNIVERSITY OF IOWA
Department of Political Science
Iowa City

July 26, 1947

Dear Mr. Bebout:

In accordance with the constitutional convention provision of the Iowa constitution, the question of calling a convention 'to revise the Constitution, and amend the same' was first submitted to a vote of the people in 1870, and then every ten years thereafter. In 1870, 1880, 1890, 1900, 1910, 1930, and 1940 a majority of those who voted on the question opposed the calling of a convention.

The vote of the people in 1920 was 279,652 for and 221,763 against calling a convention. On January 20, 1921, a bill was introduced into the House of Representatives making provision 'for a convention to revise and amend the constitution, naming the number of delegates and districts; . . .' This bill passed the House on March 15 and was messaged to the Senate on the following day. On March 30 it passed the Senate with amendments which the House refused to accept. A conference committee was appointed; but the House rejected its report on April 8, which was the last day of the session. Thus the General Assembly adjourned without making any provision for a constitutional convention.

In support of the position taken by the General Assembly, some of the members and others insisted that there was no popular demand for a revision of the constitution. One representative, however, did not believe the General Assembly 'should override the wishes of the people.' Another said the 'people expressed a wish for the convention and it is for the assembly to make necessary machinery for it.' However, nothing was done and there has been no constitutional convention since 1857. Every ten years the question is submitted to the voters on a separate ballot.

Although no general revision of the constitution of 1857 has been made through the process of a constitutional convention, amendments adopted since 1857 have effected substantial changes in the document. Nineteen amendments have been added, five in 1868, one in 1880, one in 1882, four in 1884, two in 1904, and one each in 1908, 1916, 1926, 1928, 1936, and 1942.

Very sincerely,

(s) Herman H. Trachsel
HERMAN H. TRACHSEL"

"EFFECT OF PROVISION IN MARYLAND CONSTITUTION
FOR VOTE EVERY 20 YEARS ON QUESTION OF
CALLING A CONSTITUTIONAL CONVENTION

So far as I know the constitutional provision requiring a referendum on the question of calling a convention has been religiously observed by the Maryland legislature. I have not investigated the matter thoroughly, but it is my definite impression that the vote has been taken each time when it was due and that the voters themselves have rejected the proposition.

JOSEPH M. RAY
Professor of Government and Politics
University of Maryland—July 25, 1947"

7. *Oklahoma.* The 1907 constitution provided for a vote every 20 years. There has been no convention since. The provision, which is not self-executing, orders the legislature to submit the question. The 1947 legislature passed the required bill; but the bill was vetoed and could not muster enough votes for repassage.

8. *New Hampshire.* The New Hampshire constitution is unique in that a constitutional convention is the only method for submitting any amendment or change. Yet, the provision for an automatic vote *in town meetings* every seven years on the question of holding a convention has resulted in only eight conventions since the provision was written into the constitution of 1784. Two complete revisions have been submitted, only to be rejected by the people. Six conventions have submitted partial revisions by a large number of amendments which were only partly adopted. The people this year voted for a convention which will be elected in 1948.

Conclusions:

A total of 191 conventions of one sort or another had been called or held by the several states through 1943. Of these, only 23 were held in the present century. Louisiana, with no provision for calling conventions, has had 10 meetings; Mississippi, with no provision, has had 7; similarly, Arkansas has had 6; Alabama, requiring a majority vote of the legislature and a vote by the people, has had 6; Virginia, with the same provision, has had 8; while New York, with the same requirement plus a mandatory provision calling for a popular referendum every 20 years, has had 8.

The record simply does not bear out the claim that the people vote for revision every chance they get. Indeed, our own New Jersey experience should indicate that. As a matter of fact, the people generally do not vote for revision either by calling a convention or approving a product thereof unless there is a well-organized campaign conducted by some sort of cross-section of citizen interests and organizations.

The fact is that Americans are pretty conservative about their constitutions and the people are prone to vote against change unless they feel they have an affirmative reason for voting for it. When in doubt on anything as complicated as constitutional revision they are inclined to vote "No." This is especially so in times of stress, when people are preoccupied with other matters which touch them more personally. The rejection of the proposition to hold a convention in Michigan in 1942 was based on the argument, specious in our opinion, that they should not undertake such revision during the war. It should be noted that the people of Ohio voted "No" on a convention proposal in 1932, at the depth of the depression.

The following paragraphs by W. Brooke Graves, one of the leading authorities on state governments and constitutions, and Irving J.

Zipin, member of the Philadelphia Bar, appeared in the *Book of the States*, 1943-1944 and 1945-1946. These paragraphs indicate that the real problem is to get the public to undertake revision, not to keep the public from voting for revision without good cause:

“Whenever a proposal is made to revise a state constitution, it is always in danger of defeat from supposed friends who admit the need of revision but question the advisability of undertaking the project at the time. If business conditions are good, they favor postponement for fear of ‘rocking the boat.’ If times are bad, they fear that so important a venture should not be undertaken when men are worried and their minds disturbed. These persons, as Governor Edison of New Jersey pointed out, are often used to camouflage real reasons which would not bear public scrutiny. If one were to be guided by these prophets of disaster, there would never be a proper time to revise a constitution, and the task would never be undertaken.

It is to be hoped that the electorate of the several states will not be misled by any such arguments. Constitutional revision is urgently needed, not in one state but in many, and the time to act is now, in preparation for the new era, the coming of which we confidently await at the conclusion of the war. Our armed forces are fighting in distant parts of the world to preserve the democratic way of life. We do not want to save democracy in faraway lands only to discover that we have failed to preserve it at home. We shall not strengthen the democratic tradition by declaring a moratorium on progress in state and local government affairs for the duration.”

JOHN E. BEBOUT

July 31, 1947.

LETTER OF PURDY F. BENEDICT, Esq.

216 Clifford Street
Newark 5, N. J.

July 31, 1947

Mr. John F. Schenk,
Flemington, New Jersey

Dear Mr. Schenk:

The writer understands that the Convention in New Brunswick studying the revision of the New Jersey State Constitution has before it for discussion a clause which in substance will have the effect of giving labor unions immunity from regulatory legislation even should it be urgently needed in the public interest.

The writer firmly believes that the new Constitution should not be cluttered with legislative enactments that will hamstring justice or affect the natural and inalienable rights of the individual citizen. Furthermore, I believe that we should be very careful that this new Constitution does not give any preferential rights to any group or class of citizens, but we should all be subject to the same laws, rules and regulations.

Sincerely and cordially yours,

PURDY F. BENEDICT

LETTER OF REV. J. E. BISHOP

JOHN WESLEY METHODIST CHURCH
South Port Norris, N. J.

July 6, 1947

Honorable John F. Schenk

My dear Mr. Schenk:

Please accept my sincere appreciation for your recent letter requesting my views on "Rights, Privileges, etc."

I prefer mailing my views as it would be extremely difficult to meet your Committee.

My views are these: First, I recognize that in view of the fact that our system of government is the best devised by man, all human basic rights and privileges must be exercised by *all* citizens alike if we hope to get peoples of other lands to accept the democratic way of life.

Secondly, the rights and privileges of individuals should be so stated in the Constitution of the State of New Jersey that it will be viewed as an example to other states as a distinct contribution to the cause of American Democracy.

Third, these rights should cover every station of life with the ideals of democracy as the basis to determine what the rights and privileges of individuals should be.

There are basic rights and privileges of individuals that should never be surrendered to any individual or group or groups: (1) the right to work wherever labor is used; (2) to live in wholesome surroundings and environments; (3) to develop and exercise one's gifts, talents and abilities; (4) the right to use the means of travel and transportation; (5) the right to eat in public places and attend public amusement places, as movies, theaters, beaches or bathing resorts, and (6) the right to teach as well as to be taught in the public educational institutions of the State of New Jersey. That the exercise of any human right or privilege shall not be denied citizens because of race, color or creed.

We give support and encouragement as well as prove ourselves hypocritical to anti-democratic thinkers when we deny to our *own* citizens rights and privileges for which we have fought and sacrificed to secure for peoples of foreign lands.

I sincerely believe that practicing democracy so as to make it work and have real meaning to *all* citizens of the State and Nation will prove our best advertisement abroad.

Never in the history of mankind has there been so many seeking the emancipation of oppressed personalities, the rights and privileges of man. It is indeed timely that the Constitution of the great State

of New Jersey be rewritten and brought up-to-date and truly representative of democratic ideals and principles of government.

Mr. Schenk, it is our Christian belief and my hope and prayer that the delegates to this Constitutional Convention have the courage, wisdom and the vision to write a democratic Constitution, not merely for our time but for all time. May the Divine Guidance be yours until your task is completed.

Respectfully submitted,

JOHN E. BISHOP

LETTER OF
REV. THEODORE WOODROW BOLTZ

LIVINGSTON AVENUE REFORMED CHURCH
Livingston Avenue at Suydam Street
New Brunswick, New Jersey

July 14, 1947.

Dr. Robert C. Clothier, President,
State Constitutional Convention,
River Road,
New Brunswick, New Jersey.

Dear Dr. Clothier:

As a delegate from Middlesex County to the State Constitutional Convention, as well as president of the Convention, I wish you would use the power of your influence and vote to guarantee the traditional American principle of the separation of church and state in the commonwealth of New Jersey.

As you are aware, the Supreme Court of the United States, by a 5-4 decision, upheld a present state law which allows students to travel without charge to parochial schools in tax-supported school buses. This in itself is a minor matter and I would be happy to see the children ride to school rather than walk. However, when one views the total political strategy of the Roman Church in the United States, he is alarmed at some of the steps taken. Already, textbooks in parochial schools are supplied with public school funds. In recent years, the Roman strategy has been working itself out in North College Hill, a suburb of Cincinnati, Ohio. This has happened there: a public school board, with a Roman Catholic majority, leased a parochial school building from the archbishop of the Cincinnati diocese to whom was paid rental from public funds; nuns were employed as public school teachers, their salaries paid by school taxes, though they continued to wear their sectarian garb and taught the principles of their religious faith to Roman Catholic children, who alone attended this parochial school. Only through the courageous stand of the Superintendent of Schools this past Spring and the blacklisting of the public school system by the National Education Association did order finally come out of chaos—the school board resigned and public education became once more *public* education rather than sectarian education. This is what *can* happen when a sectarian group attempts to exploit funds intended for the public schools.

I realize we do not have complete separation of church and state in the U. S., in that the church cannot ignore the state—it must

abide by the laws of the state. But we do have separation to the extent that the state does not support the church. On this traditional American principle our State Constitution should guarantee that no public funds shall be used in any way to support any sectarian group *or any of its functions*. This would be just. We don't want the state to support Jewish parochial schools, nor should it support Protestant parochial schools. Neither should it support Roman Catholic parochial schools.

I speak not out of prejudice but out of the knowledge of what the Roman hierarchy is seeking to do as it girds itself with political power in our country—a country long proud of its religious freedom.

Let this freedom be guaranteed by specific article in New Jersey's new Constitution!

Very sincerely,

THEODORE W. BOLTZ

P. S.—Enclosed is a pamphlet which is not a “tract” in the usual sense of the word. I know you will find it interesting and informative reading.

LETTER OF EUGENE BOUTON

53 Warren Street
Bloomfield, N. J.

July 2, 1947.

The Members of the Constitutional Convention
New Brunswick, New Jersey.

Gentlemen:

It must be as great a privilege to every lover of this Nation, and particularly of this State, as it is to me, to say directly to as unbiased a body of those chosen to repair or reconstruct the foundations of our government as we can hope to entrust with that vital task, what we think our Constitution ought to provide.

Asking what we think ought to be, and voting for or against what the Convention thinks ought to be, comes as close to grass roots democracy as we can get. Unless we have initiative and referendum, we can only vote to elect legislatures and officials, with party aims and strength, and obey the laws which they make under pressure groups and personal aims, and the courts decide are not contrary to the Constitution which we have made.

It seems to be peculiarly fitting that this Convention begins its work so near the day of the year when the Declaration of Independence was adopted so near to New Brunswick. A careful personal reading of that protest against the treatment of the colonies by the British government must suggest similar abuses which the people of this State and this Nation are now suffering from unofficial organizations which set up their rules and acts in practical defiance of the laws and customs which we have been accustomed to boast of as "The American Way of Life," and for the enforcement in other lands of which we have taken our noblest and strongest from their homes and their purposes and exposed them to the perils of battle and disease.

While the Declaration does not and cannot name the abuses which beset "Life, Liberty and the pursuit of Happiness" in our day, it does protest against unfairness and tyranny, and provide direct and general action against them. It does not set up boards, conciliators and negotiators to see how few of the evils it can endure by appeasement.

This Convention also sits in the same season and also near the same place where a similar body of honest and able men planned and wrote the Constitution of the United States, which has won the admiration of the world's greatest statesmen, and has piloted this Nation through its own and the world's Scyllas and Charybdises for 160 years. This seems to us a long time. But it is only two 80-year

lives and but one day on the great clock dial of recorded time. We hope that when the next September comes it will have another bulwark of liberty, justice and peace as solid as that which was completed September 12, 1787.

That said: "We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the genral Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

To make the blessings of liberty more secure, ten amendments were added as soon as possible, the tenth of which said: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Now we are confronted by the question: Are the "People of the United States" those who spend most of their time in the pursuit of the average annual income said to be between \$2300 and \$2400 per family and vote or can vote at the regular elections, or those who *are organized* into unions which hold conventions to plan ways and means to secure the blessings of liberty and salaries or pay of \$3000 or more a year for each individual member, with no regard for the "general Welfare"? The members of this Convention have been chosen by the constitutional method instead of union oligarchy. As representatives of the Nation as well as the people of New Jersey, they are responsible for presenting to the voters an over-all law with equal rights and duties for all citizens.

The aims and acts of the labor unions ignore or oppose every one of the six objects named in the Preamble to the National Constitution. Their utter disregard for the welfare of others than their members, their choice of the most harmful times to deprive persons and communities of necessities, prevent the ordinary routine of business and travel by land and sea are only eclipsed by their demands that no laws shall be made to curb their outrages, their proposals and acts to defy police and legal restraints, their clamor for "decent wages," cry of "slave labor," and demands for "no punitive action." They have crowded employers into slavery to them by punitive strikes, picketing and strong-arm methods.

Their insistence on higher wages and salaries year after year has been the chief cause of the "high cost of living" which is their main excuse for annual increases:

1. Increase of wages and salaries in government must increase taxes.
2. Increase of wages and salaries in production forces higher prices.

3. Subsidies to hold or lower prices increase public debt, which taxpayers must bear until they and the yearly interest are paid. Increased cost of supplies and materials with increased wages have brought about the present devastating costs of everything.

If a suit of clothes made by a tailor at \$5 a day is duplicated by him at \$10 a day, somebody must provide the extra \$5, unless he risks discipline of his union by working faster or longer hours, which would be like snakes in Ireland.

By threats, strikes and presidential encouragement the Nation's railroads were so drained by increased wages and taxes that many of them have had to be reorganized, and about a score of them have had no returns for their ownership, only shadows of their former values. The baser elements of society have followed the example of the unions by robbery and other crimes physical and financial. The Convention may well keep in mind that the unions are still demanding more with the usual threats and planning to defy authority. However they may be worded, safety to the State and justice to its citizens demand these provisions:

1. *Except by the military and the police, there shall be no picketing.*

For weeks pickets have walked here beside a tavern, with sandwiched cards saying, "This tavern refuses to recognize Bartenders Union No. 131. We demand fair wages, hours and conditions." In front and on the side the tavern displays this: "This Tavern is NOT on strike. Its employees are satisfied with pay and conditions. We will not be forced into a union." Signed, Employees." That illustrates what is probably a general method of "organizing." Union picketing is mobbing.

A and B voted at the same polling place. As A was leaving the sidewalk to enter his home, B tried to prevent him. In the struggle B was thrown to the sidewalk and died as the result. Was A guilty of a crime?

If A had been thrown to the sidewalk and died as the result, would B have been guilty of a crime?

2. *Officials and employees may resign 30 days after notice. Those who neglect or refuse to perform regular service shall be deemed to resign their positions.*

The only reason for employing anyone, except as charity, is to get work done.

3. *Except to remedy judicially declared errors, there shall be no retroactive obligations or payment.*

4. *Those who pay for lawful service shall decide who shall perform it.*

That will settle jurisdictional disputes.

5. *"No person shall be denied employment because of member-*

ship in or affiliation with or resignation from a labor union; or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay any dues to any labor organization as a prerequisite or condition of employment." Amendment to the Constitution of Arkansas, approved November, 1944.)

As an absolutely fair provision, this ought to be in the Constitution of every state in the Union and a national law. It should be an assurance of support to every sister state trying to "establish justice" within its borders. As a voice of a member of the union with an entirely Democratic representation in Congress, it should appeal to the members of that party in this Convention and in the election to approve or reject.

It justifies the action of many members of that party who see that while the unions have favored that party in elections with the expectation of political favors in return, they have shown toward its voters the same disregard of rights and needs as to their rivals, or even more as in Pittsburgh and New York.

6. *No unofficial person or persons shall (1) occupy premises or property or interfere with their operation without permission of the owners; (2) interfere with ingress or egress of owners or their representatives to and from their premises or property; (3) interfere with traffic in their vicinity or on public highways; nor (4) shall any person threaten, intimidate or injure any employer or employee or any member of his family because of the exercise of lawful rights in matters of employment.*

These items are so elementary and basic in civilization that it would seem needless to mention them if they had not so long been blatantly and flagrantly violated in this State and Nation.

Confucius (551-478 B. C.) is credited with teaching: "What ye would not others should do to you do not ye unto them." The Hebrew law and prophets said it positively: "Whatsoever ye would that men should do to you do even so unto them." It applies to everybody everywhere and always. It links the lessons of the past to the hopes of the future. It is the boundary between civilization and savagery. The degree of savagery is measured by the extent of departure from it.

"We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same to succeeding generations," may well provide in our Constitution that boards of educa-

tion and other school officials shall keep this Golden Rule inscribed in or on public school buildings in such manner as will seem most likely to implant it in the minds and hearts of our children.

Respectfully,

EUGENE BOUTON

LETTER OF EUGENE BOUTON, Esq.

53 Warren Street
Bloomfield, N. J.

August 18, 1947

Dear Mr. Schenk:

I am unable to feel that there is any other more important matter demanding the Convention's action than the actions and purposes of the unions. Apparently it is the disposition of the Convention to help the unions and take no action to protect the people from picketing, the stoppage of the ordinary and proper processes of living. If that is the verdict of the voters of the State, we shall have to endure it as well as we can.

It is not fair to attach the "right to organize, etc." to the Article which no one objects to. Let the union proposal stand on its own ground.

It is not necessary to make the union article and the provisions against picketing, abandoning service and blocking the highways alternates. They can be submitted to the people as separate proposals. If both were approved, they could exist together in the new draft.

The unions make no secret of their purpose to change the membership of Congress, presumably the State Legislature, and support the doctrine of President Truman that wages have little to do with prices. If this Convention supports them, the people of New Jersey will have to decide between the sections of the Constitution and the existing one.

I still hope that your Committee will ask to have the proposed sections for the protection of equal rights for all, instead of special privileges for the unions, submitted to the voters.

Yours respectfully,

EUGENE BOUTON

LETTER OF ERIC BROWN, Esq.

117 North Seventh Avenue
Highland Park, N. J.

July 28, 1947.

Bill of Rights Committee,
Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

Gentlemen:

I herewith request that the subject of New Jersey licenses be put on your agenda for inclusion in the new Bill of Rights.

I have lately been in correspondence with the holder of a New Jersey license as certified public accountant. He disagrees with me. He thinks the present licensing arrangements are eminently satisfactory.

To quote from his letter: "I have found the members of the various boards have been outstanding fair-minded practitioners of their respective professions and the conduct of the examinations, and types of questions asked, and experience and skill required of applicants is a very essential and valuable protection for the public and prevents unqualified persons from holding themselves out as professional men."

I agree to this extent: It is a very valuable protection, even more valuable to present license holders than to the public, so valuable as almost to constitute a monopoly. Also I agree that it prevents unqualified persons and, I should like to add, many well-qualified persons from holding themselves out as professional men. It might well be classed as unfair competition, which has been often federally frowned upon.

A few years ago I walked into a small tailor shop in New York. The owner had just been visited by a benefactor who called his attention to the fact that there had recently been an outbreak of picketing, window-breaking, and even acid-throwing. Fortunately, the organization which he represented was in a position to suppress such activities. For only ten dollars a week the tailor could be assured that nothing unpleasant would happen to his shop or to him.

That was such a bargain in protection that he was unable to refuse.

People who want licenses are citizens too. Maybe their rights should not be overlooked.

The new Bill of Rights should contain this right: New Jersey licenses to practice any trade, profession, or occupation for gain shall be granted or withheld only by full-time employees of the State.

This power shall not be delegated to or exercised by any private individual or organization or any merely nominal employee or employees of the State.

Sincerely,

ERIC BROWN

LETTER AND PROPOSAL OF
KIRK BROWN, Esq., ON AMENDMENT AND
REVISION OF CONSTITUTION

KIRK BROWN
79 North Mountain Avenue
Montclair, N. J.

June 27, 1947

Constitutional Convention,
New Brunswick, N. J.

Reform of Article IX
Amendments

Gentlemen:

The present method of voting in the two Houses on amending the Constitution has given the legislative power a control that denies reasonable access to it by the people in the exercise of their sovereign right to alter or reform their government. This extraordinary method of voting requires a *majority of those elected* to each House, with each House voting separately, to approve a change.

By this method out of 81 legislators, 11 Senators can defeat a proposed constitutional change in the preliminary stage, (if instead of a majority, approval required a two-thirds vote, only 8 Senators would exercise this power.) Mere absence or not voting counts as negative.

It is proposed to change this method of voting to the usual one of requiring a *majority of those present* and voting and taking the vote in joint session, thus putting the votes of all legislators on a common footing and bringing the preliminary voting by the Legislature in accord with the final vote for ratification by the people, when the vote is statewide and a vote in one county counts the same as in any other county.

Another method of control which causes a year's delay is the favorable vote of two Legislatures. The present Convention is to report its findings September 12; the people will vote upon these November 4. This is an interval of 53 days instead of 365. In practice this interval will be the time between the passage of the change and the next following general election day. With a minimum interval of 60 days this will be sufficient time for consideration under modern methods of communication.

Still another method of delay which is a fruitful source of control is by the usual devices by which a vote can be delayed and ultimately prevented. To prevent this constitutional changes should be made preferred legislation.

Periodic revision may prove to be a rejuvenation of constitutional

government. The many failures among such governments have usually marked the decay and obsolescence of their constitutions. It would provide a break in legislative control and renew and strengthen the peoples right to alter or reform their government.

The present instance of the restrictions on the proceedings of the Convention being presented to the people for validation without opportunity to express their choice of an untrammelled Convention, is an abuse of legislative control and a precedent of unlimited possibilities. Its future use should be denied.

Ever since the adoption of the New Jersey Constitution of 1776 there has been a constant effort by the Legislature to control the Constitution by controlling the method of amending it. There is no political partisanship in this. During this time political parties have come and gone. The struggle for dominance between the people and their representatives is an example of the familiar contest for power that marks the rivalry of all puissant bodies. That this strangle hold of the Legislature still persists is evident. It has occurred in the past and may occur again that a political boss has had sufficient power to control the Legislature and thereby control the Constitution. The opportunity is now presented for the first time in over a century to prevent this and to make the declaration that the people "have the right at all times to alter or reform" their government more than mere words.

A form of Article IX embodying these reforms is herewith presented for your consideration. It is believed that enough safeguards of the process of amendment have been provided to secure it against abuse: the initiative is still with the Legislature; the reforms, on the other hand, are not radical; resort is had to well established procedures such as the method of voting in person and in joint session, preferred legislation and periodic revision.

SUBSTITUTE FOR ARTICLE IX

Any change or changes of this Constitution may be proposed in the Senate or in the General Assembly and if the same shall be approved by either House by a majority of those present and voting and disapproved by the other it shall be mandatory upon the other House to meet with it in joint session and vote thereon. In such joint sessions votes of Senators and Assemblymen shall have equal effect. If the change or changes shall be approved two times by a majority of those present and voting with an interval of not less than ten calendar days years between approvals, such proposed change or changes shall be entered on the journals of the Houses with the yeas and nays taken thereon and shall be published in at least one newspaper in each county, if any be published therein,

not less than three months prior to submission to the people. A vote to hold a convention to amend or revise the Constitution shall be taken in like manner.

Changes which have been published as required by this Article shall be submitted to the people for ratification at the next following general election. Submission shall be in such manner as the Legislature shall prescribe. If more than one change be submitted they shall be submitted in such manner and form that the people may vote for or against each separately and distinctly. If the people shall approve and ratify such change or changes, or any of them, by a majority of the electors who vote, such change or changes so approved shall be part of the Constitution.

The power of any agency duly appointed to draft change in the Constitution shall not be limited to do so nor shall such a limitation be presented for ratification by the people. The proceedings of such agency shall not be subject to approval or dissent nor shall anyone be empowered to withhold certification for ratification by the people.

The Legislature may authorize an agency to draft proposed changes in the Constitution at any time subject to a referendum by the people. At intervals of 20 years following the ratification of this provision it shall be mandatory upon the Legislature to authorize an election for a constitutional convention.

Proposed changes in the Constitution shall be given precedence over all other legislation after 15 calendar days following introduction.

Changes in the Constitution that fail of ratification shall not be submitted again to the people in less than five years.

No person holding any appointive office of profit under the State Government or that of the Federal Government shall be eligible to membership in a constitutional convention, commission, committee or such like body.

The Governor shall not have any power to approve or disapprove any resolution or bill for amending the Constitution or for holding a constitutional convention.

Respectfully submitted,

KIRK BROWN

PROPOSAL OF
KIRK BROWN, Esq., ON LABOR RIGHTS

KIRK BROWN
79 North Mountain Avenue
Montclair, N. J.

July 1, 1947

Constitutional Convention,
New Brunswick, New Jersey

I suggest the following addition to the so-called Bill of Rights:

“No person shall be denied employment because of membership in or affiliation with or resignation from a labor union or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment. Nor shall any corporation or individual or association of any kind deduct from the wages of its employes their dues in any association or organization of any kind either with or without the employes' consent nor exert persuasion or compulsion upon them to maintain membership therein. The Legislature shall have power to enforce this article by appropriate legislation.”

Since this was proposed to the Commission on Revision, 14 states have put substantially a like amendment in their constitutions.

Respectfully submitted,

KIRK BROWN

MEMORANDUM OF
JUDGE THOMAS BROWN ON THE
PREAMBLE TO THE CONSTITUTION

IT IS OF THE UTMOST IMPORTANCE THAT THE REVISED CONSTITUTION
FOR THE STATE OF NEW JERSEY CONTAIN AN AMPLE
AND APPROPRIATE PREAMBLE.

The adoption of a revised Constitution in the State of New Jersey is an epochal event affecting the security and well-being, not only of present but future generations in our State. It is being considered at a time when chaos and misery are rampant throughout the world, after one of the most destructive wars in the history of mankind, when peace-loving and God-fearing men are longing for happiness and security.

It is fitting and necessary for every citizen in the State, no matter what his position, actively to labor towards a result that will be in conformity with the rights of men and the Divine Law. It would be tragic, if not traitorous, to achieve anything tinged in the smallest degree with bias, hate, vengeance, or even political expediency. To our heroes who sacrificed so much in the last war that they might preserve our sacred ideals of law and justice, and particularly to Almighty God, the source of all justice, we owe a positive duty not to swerve ever so little from the path of right.

Our country is founded on the principle of "a government of laws and not of men," that is, not by any caprice of tyrants. Laws in the United States are based on a three-fold theory: (1) the law of God, sometimes called the revealed law, which collectively, is the whole body of God's commandments and revelations; (2) the law of conscience, which is the natural (moral) law, sometimes referred to as the law of reason; and (3) the man-made law, that is, our constitutional and legislative enactments. We should realize that the harmonious unity of the three-fold law is under attack both within and without our country. It is a danger as potent as any with which we have ever been confronted. The philosophy of Hume, Kent and Marx of separating the law of a country from the law of God and conscience has resulted in dictatorship and loss of the majesty and freedom of men, superseded by serfdom and misery. During the past few years there has been a book in circulation in which 16 American legal authorities stated the fundamentals of their philosophy of law. They were dealing with the origin of law. Only one gave Almighty God any place whatever in the theory and meaning of law. If we separate God from our laws or deny Him to be the dominant and supreme source of law and justice, it would not be

long before we would become an unfit ally for any country and our own dissolution would follow the pattern of extinction that mighty empires have invariably suffered in the past by such an ideology of government.

There is a tendency at the present time, of some writers, when explaining the meaning of natural law, to separate it from civil law. Dependable authorities on this subject through the countries and down to the present time still maintain the three-fold unity of the law. Blackstone is a generally recognized and acceptable authority on this question. In his commentaries on the question of the natural law, he says in part:

“* * * Laws, in their more confined sense * * * denote the rules, not of action in general, but of *human* action or conduct: that is, the precepts by which man, the noblest of all sublunary beings, a creature endowed with both reason and freewill, is commanded to make use of those faculties in the general regulation of his behaviour.

Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependance will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct: * * * And consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will.

This will of his Maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when He created man, and endued him with freewill to conduct himself in all parts of life, He laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws. * * *

* * * These are the eternal, immutable laws of good and evil, to which the Creator himself in all His dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such, among others, are these principles; that we should live honestly, should hurt nobody, and should render to every one his due; to which three general precepts Justinian has reduced the whole doctrine of law. * * *

* * * As therefore the Creator is a being, not only of infinite *power*, and *wisdom*, but also of infinite *goodness*, He has been pleased so to contrive the constitution and frame of humanity, that we should want no other prompter to enquire after and pursue the rule of right, but only our own self-love, that universal principle of action. For He has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity. He has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised; but has graciously reduced the rule of obedience to this one paternal precept, 'that man pursue his own happiness.' This is the foundation of what we call ethics, or natural law. For the several articles, into which it is branched in our systems, amount to no more than demonstrating, that this or that action tends to man's real happiness, and therefore very justly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is destructive of man's real happiness, and therefore that the law of nature forbids it.

This law of nature, being co-eval with mankind and dictated by God

Himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

* * *

This has given manifold occasion for the benign interposition of divine providence; which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in divers manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in it's present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is of infinitely more authenticity than that moral system, which is framed by ethical writers, and denominated the natural law. Because one is the law of nature, expressly declared so to be by God Himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have been an equal authority; but, till then, they can never be put in any competition together.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these."

The law of our country is founded on the principle and thory of the three-fold law. This is clearly emphasized in a decision of the United States Supreme Court in *Church of the Holy Trinity v United States*, 143 U.S. 457, where copious reference are made to historic instances in the life of our country showing its governmental foundation is based upon a belief in God, some of which are: the commission granted to Columbus on his voyage westward which was granted "by the Grace of God" and "it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered." The first colonial grant to Sir Walter Raleigh contains a reference to its being made "by the Grace of God." In the first charter granted in Virginia it is stated it "may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty." Language of a similar kind may be found in the Compact made in the Mayflower, and in the orders for a provisional government in 1639. In the charter of privileges of William Penn to the province of Pennsylvania in 1701, it is recited:

"And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine knowledge * * * doth enlighten the Minds, and persuade the Understanding of People, I do hereby grant etc."

Coming nearer to the present time, the Declaration of Independence recognizes the presence of the divine in human affairs. An examination of all other state constitutions and bills of rights contained therein, either directly or by clear implication, contain a pro-

found reverence for God and assumption of His being the source of the natural and moral law. Passing beyond these matters to a view of American life as expressed by its laws and customs, we find everywhere a clear recognition of the same truth, among which are the form of oath universally prevailing with an appeal to the Almighty, whether it be the opening session of all deliberative bodies and conventions (*except the U.N.O.*) or the swearing of officers in taking office or witnesses and jurors in trial of a case. The Constitution of Delaware, 1776, required all officers not only to take the oath of allegiance but to make and subscribe to the following declaration:

“I, A. B., do profess faith in God, the Father and in Jesus Christ, His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.”

It is well to bear in mind that the first Constitution adopted in the State of New Jersey, on July 2, 1776, did not refer to God throughout the entire Constitution or in the Preamble. Even the form of oath that was prescribed in that Constitution to be taken by persons elected to the Legislative Council, or House of Assembly, did not require the mention of the name of God, either directly or indirectly. In the State Constitution that was adopted in 1844 the same language was used as appears in the Constitution of the State of Rhode Island, adopted in the year 1843, except the concluding words “of government,” which appears in the Rhode Island Constitution. The proposed revision of the Constitution for the State of New Jersey which was defeated by referendum in 1944 contained the same Preamble appearing in our State Constitution of 1844. Having in mind the concerted effort that is being made, within and without our country, to separate the law of governments and nations from the law of God, and bearing in mind our dependence upon a Divine Providence for the liberty and security which we have long enjoyed, it is an obligation on our part that the Preamble in the proposed revision of the Constitution of the State of New Jersey, should contain, not by inference, but a direct acknowledgment of our dependence upon the Creator. The proposed Preamble should not contain statements which are in the Preamble of our present Constitution, that are challenging and condescending, such as “He has so long permitted us to enjoy.” “So long” is wearisome and condescending. The further statement in the same Preamble, “and looking to Him for a blessing,” is challenging. If we believe in God as the supreme source of law and justice we should humbly acknowledge our dependence upon Him and express clearly our gratitude for the civil and religious liberties which we enjoy and invoke His guidance and blessing upon our future endeavors. It is respectfully recommended the following Preamble be inserted in the proposed revision of our state constitution:

"We, the people of the State of New Jersey, acknowledging our dependence upon Almighty God, as well as our gratitude for the civil and religious liberty we have long been permitted to enjoy, and invoking His guidance and blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do Ordain and Establish this Constitution."

LETTER OF ALBERTO COLLINS, Esq.

188 Washington Ave.,
Westwood, N. J.

June 11, 1947

Bergen County Delegation
Constitutional Convention
New Brunswick, N. J.

Dear Sirs:

Please accept my congratulations on your selection as Bergen County delegates.

I would like to call your attention to the possibility of strengthening our present State Constitution with respect to certain inalienable rights and juridical procedures.

The procedures now in use regarding people whose sanity is questioned can be made more perfect. While some improvements can be made by the Legislature, it is advisable to make specific provisions in the Constitution for the guidance of future Legislatures and the protection of the people.

At present a "lettre de cachet" method is employed which denies a citizen the right to trial by jury and, in effect, constitutes a bill of attainder since it abridges his civil rights in the future. I should think that trial by jury would be mandatory in such cases and then only on the basis of a specific law violation. If guilty the citizen concerned could be imprisoned only for a definite term. That would be an infinitely better arrangement than possible life-imprisonment of a law-abiding citizen at the whim of another private citizen who has no official juridical status. I hope that when you consider the above suggestion you will keep in mind the following portions of the Federal Constitution—Article I, Section 10, Paragraph 1; and of the Amendments, Articles VI and VII.

With best wishes for a better Constitution.

ALBERTO COLLINS

PROPOSALS OF THE COMMUNIST PARTY OF NEW JERSEY

July 7, 1947

The Communist Party of New Jersey proposes the following amendments or additions to the Bill of Rights section of the New Jersey Constitution (Article I, Rights and Privileges, in the present Constitution):

1. Addition of a separate section as follows:

“The right of labor to organize and bargain collectively through representatives of their own choosing is guaranteed.”

2. Include in the present section 5, which deals with the right of free speech and free press, the following clause:

“The right of peaceful picketing shall be considered an incident of the liberty of speech and of the press.”

3. Addition of a section dealing with discrimination, as follows:

“a. No person shall be denied the equal protection of the laws by this State or any subdivision thereof or by any municipality.

“b. No person shall because of race, nationality, color, creed, religion, or political belief or opinion be denied, deprived of or subjected to any discrimination or restraint with respect to personal rights, property rights, civil rights, right of employment or any right or privilege contained in the Article, by any other person or by any firm, corporation, institution or association, or by this State or any subdivision or agency thereof or by any municipality. Any person shall have the right to restrain the violation of this subsection of the Constitution by suit brought for this purpose in the appropriate court. The Legislature shall, in addition, enact legislation to insure effective enforcement of the principles declared in this section, and to guarantee to all persons enjoyment of rights and privileges herein conferred.”

4. Addition of a section enumerating the rights enunciated by Franklin Delano Roosevelt in his famous Economic Bill of Rights, as follows:

“The right to a useful and remunerative job in the industries, or shops or farms or mines of the nation;

“The right to earn enough to provide adequate food and clothing and recreation;

“The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

“The right of every business man, large and small, to trade in an

atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

“The right of every family to a decent home;

“The right to adequate medical care and the opportunity to achieve and enjoy good health;

“The right to adequate protection from economic fears of old age, sickness, accident and unemployment;

“The right to a good education.”

5. Addition of a section on the rights of women as follows:

“The word men as used in this Constitution, shall be construed to apply equally to women, provided that nothing contained in this Constitution shall be construed as to invalidate or prevent passage of legislation advancing and safeguarding the special interests of women.”

LETTER OF THE
CONSUMERS LEAGUE OF NEW JERSEY

790 Broad Street
Newark, N. J.

July 6, 1947.

Mr. John F. Schenk, Chairman,
Committee on Rights, Privileges, Amendments
and Miscellaneous Provisions.

My dear Mr. Schenk,

We wish to state our position with reference to changes that may be proposed to the Bill of Rights or to the Schedule of the Constitution concerning laws containing distinctions between men and women. For a number of years, constitutional amendments have been introduced in the New Jersey Legislature that "men and women shall have equal rights throughout the State." This is the so-called "equal rights amendment" which our organization has always opposed. We believe that an equal rights amendment is unnecessary and would prove harmful to the women of the State.

We recommend that the rights of men and women be equalized by specific legislation to meet specific needs as they arise. This is the present method of removing sex distinctions and is in accordance with the Constitution, especially Article I, section 1 of the Bill of Rights, and Article X, section 1 of the Schedule.

Article I, section 1 of the Constitution reads:

"All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

This section has been interpreted by the courts to protect all men, that is, "men of every description, young or old, male or female." (*State v Post*, 20 *N.J.L.* 380 (1845)). Judicial decisions through the years have held that "men" in the Bill of Rights includes women. A body of statutory laws has grown up since 1844 removing common law limitations of women. A wife may be the guardian of her children, make wills and contracts, have a separate bank account from her husband. Women have political rights; they may vote, serve on election boards and party committees, and hold office. In fact, in the granting of the privilege to hold public office or employment, New Jersey has prohibited discrimination because of marital status. It is required that female teachers holding similar positions and employment with similar training and terms of service as men must be paid compensation equal to that paid to male teachers. These and other civil, political, economic, and legal rights were secured under the

present Constitution. The process was a flexible one—as specific situations arose, specific legislation was passed. A blanket equal rights amendment was *not* necessary to achieve these gains for women.

In order that the laws may not be jeopardized under the proposed Constitution, we propose that the provisions of Article X, section 1 of the 1844 Constitution be retained:

“That no inconvenience may arise from the change in the Constitution of this State, and in order to carry the same into complete operation, it is hereby declared and ordained that—

1. The common law and the statute laws now in force not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature * * * .”

Under this provision, the courts have held that laws adopted prior to the enactment of the Constitution were still in effect and governed their decisions until changed by the Legislature. (*Hunt v Hill*, 20 *N.J.L.* 476). By continuing this provision in the proposed Constitution, we can be assured of the retention of the very useful clause in the Revised Statutes, namely:

1:1-2. “Whenever, in describing or referring to any person * * * the masculine gender is used, the same shall be understood to include and apply * * * to females as well as males.”

It is our opinion, therefore, that by retaining the provisions of Article I, section 1 and of Article X, section 1, we will keep the gains that women have made, while, at the same time, we will retain the specific protections which she has acquired until such time as these laws prove unnecessary.

We are opposed to a blanket equal rights amendment which abolishes at one stroke all laws for the protection of wives, widows and workingwomen. Under New Jersey law, at the present time, the husband is responsible for the support of his family. (*Common law, Rich v Rich*, 12 *N. J. Misc.* 310, 315, 171 *Atl.* 515). We believe that there are few social workers who would be willing to throw away this safeguard. It is conceivable that conditions of society will change in this respect. If so, the Legislature may see fit at some future time to relieve the husband of this obligation or it may substitute joint support on the part of both husband and wife. In any event, the Legislature can make the change without an equal rights amendment. In fact, the adoption of an equal rights amendment would immediately absolve the husband from his responsibility and deprive mothers and children of this protection without adequate safeguards.

A group of laws has been passed for the benefit of *widows*, especially in the matter of inheritance and workmen’s compensation benefits. They include:

1. The right to have exempt personal property up to \$200 value set aside for herself and family. (*Rev. Stat.* 3:9-7)

2. If probate of the husband's will is contested, the widow may have support for herself and children from the income of the estate, as the court directs. (*Rev. Stat.* 3:2-29)
3. The right to receive unpaid wages due her husband at the time of his death up to \$75 without formal administration. (*Rev. Stat.* 34:11-30)
4. Right to have continued to her during her occupancy of the family home, the exemption of property from creditors' claims allowed her husband in his lifetime. (*Rev. Stat.* 2:26-111)
5. Right to receive death benefits under Workmen's Compensation Act. "Dependency shall be conclusively presumed as to the decedent's widow." (*Rev. Stat.* 34:15-13)

These laws for the benefit of *widows* would be wiped out if an equal rights amendment were adopted.

And finally, there is the whole group of protective legislation on behalf of the woman worker. These include regulations of hours of work, minimum wages, and industrial homework. Some of these are:

1. Hours of work: 10 a day, 54 a week. (*Rev. Stat.* 34:2-24)
2. Night work: (1941-43 *Cum. Supp.* 34:2-28)
3. Providing seats. (*Rev. Stat.* 34:2-29)
4. Minimum wage. (*Rev. Stat.* 34:1-1, 34:11-35 to 46, 34:11-48, 34:11-53 to 56; *Laws* 1941, c. 321, Orders 1-5)
5. Industrial homework. (*Laws* 1941, c. 308; minimum wage directory order No. 2; mandatory order No. 3)
6. Prohibitory: In the manufacture of nitro and amido compounds (Dept. of Labor Safety Standards, sec. 9 (h), 1917); handle any dry substance or dry compound containing lead in any form in excess of 2 per cent. (Dept. of Labor Safety Standards for Lead Corroders and Oxidizers, sec. 2, 1917)

Among other organizations, the Consumers League has worked for years to get these laws on the statute books. Under the minimum wage law, orders have been issued fixing minimum wages for the laundry, restaurant, beauty shop, and cleaning and dyeing trades; none of them are covered by the federal Fair Labor Standards Act. What will be the result if the equal rights amendment were to be adopted? Is it not clear that the woman worker would lack any protection from long hours and low wages, except for the minority in unions. It might be answered that the Legislature need only pass laws extending minimum wage and hours regulations to *men*. We cannot be optimistic over such a solution. For many years we have worked to extend the minimum wage laws to men in the intrastate trades—so far with no success. Would opposition subside imme-

diately upon the adoption of an equal rights amendment? We fear that it will be a long and uphill struggle before protective legislation will be extended to men—and in the meantime, women workers will be deprived of protection.

We believe that the adoption of an equal rights amendment would be a calamity for the wives, widows, and women workers of this State. The Legislature should *not* be prohibited by the Constitution from making laws containing sex distinctions—as changes occur in the status of women, the laws can be changed to meet the situation.

We respectfully request the Committee to scrutinize carefully all proposals which would abolish protective legislation for women, and we urge that the present flexible method of legislative enactment be continued.

Respectfully submitted,

SUSANNE P. ZWEMER, *Vice-President*,
Consumers League of New Jersey

MEMORANDUM OF JOSEPH L. BUSTARD
DIVISION AGAINST DISCRIMINATION
NEW JERSEY DEPARTMENT OF EDUCATION

DEFINITION OF TERMS PERTINENT TO THE PROPOSED
BILL OF RIGHTS

When one is speaking of civil rights or framing a constitution, the expression "no discrimination on the basis of race, creed, color or national origin" receives constant usage. In recognition of complex problems that might develop over the meaning of race and color, and in order to be all inclusive, our national legislators wrote these words in the 15th Amendment to the Constitution of the United States, Section 1: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

The two words "race" and "color" in seriatim, have been challenged on the grounds that they are redundant. This is not the case. The word "race" is a generic term and consequently is much more inclusive than the word "color." The ethnological definition of the word "race" (and that is the sense in which we mean it here) would read as follows: "a definition of mankind possessing constant traits transmissible by descent sufficient to characterize it as a distinct human type."

"Color," on the other hand, implies a relative degree of skin pigmentation. Within the Negro "race" there are many differences in skin color. Acts of discrimination and segregation often occur on the basis of a person's skin color, its lightness or darkness, and not solely on the grounds of race. It is a known fact that dark-skinned Negroes are more frequent victims of discrimination than are light-skinned Negroes.

With the impending Fair Employment Practice Bills before Congress (S. 984-H. R. 2824) the words used are "race, religion, color, national origin or ancestry." These words were decided upon after much consultation with scientists and experts.

The scientists indicated that "race" and "color" are not synonymous, since color signifies shadings and intermixtures not representative of race. If the term "race" only is used there is a danger of interpretation in the strictly anthropological sense which will not give protection to those not strictly members of a racial group. The terms suggested are as all-inclusive as possible without being repetitive.

Similarly, the two words "religion" and "creed" are often used

together, and again the question has been raised as to whether or not they are repetitious.

As in the first case, it is a question of the word "religion" again being a generic term, whereas the word "creed" has a more limited meaning. "Religion" usually refers to one of the various established faiths, such as Catholicism, Protestantism, Judaism, etc. A "creed" would more correctly refer to a branch of one of the various faiths referred to above.

July 31, 1947.

RESOLUTION OF ESSEX COUNTY COLORED REPUBLICAN COUNCIL, INC.

WHEREAS, all citizens of the State of New Jersey, regardless of race, creed, color, previous condition of servitude or national origin, should be entitled to the full and equal protection of the laws of the State of New Jersey: and

WHEREAS, in the past it has been difficult to eliminate or hold in check certain discriminatory practices, not by the State itself, but by agencies thereof, or by corporations enjoying their existence at the will of the State: and

WHEREAS, we believe that the best possible method of curtailing and eliminating discrimination and inequalities before the law against any and all minority groups in this State, is to enact a strong declaration in the Bill of Rights of the proposed new Constitution, which will declare unequivocally here in New Jersey as in the sister State of New York, that we definitely subscribe to the great principle of the "Founding Fathers of this Republic": "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness," and

WHEREAS, this matter has been most carefully considered in regular meetings of this organization; and

WHEREAS, our representatives have conferred and counselled with representatives of other interested organizations;

BE IT THEREFORE RESOLVED, that we hereby respectfully submit to, and urge the adoption by the 1947 New Jersey Constitutional Convention in meeting assembled at New Brunswick, New Jersey, the following proposed Article to be inserted as a part of the Bill of Rights of the proposed new Constitution for the State of New Jersey.

"No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by this State or any agency or subdivision of the State."

AND BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the appropriate sub-committee of the Constitutional Convention, copies be forwarded to the press, and a copy spread in full upon the minutes of the Council.

The above resolution was unanimously adopted by the Essex

County Colored Republican Council, Inc., in a regular meeting at Newark, N. J., on June 25, 1947.

(signed) JAMES OTTO HILL, M. D.,
President

(signed) J. MERCER BURRELL,
Chairman, Resolution Committee

Attest:

(Seal of Essex County Colored Republican Council, 1945)

ESTELLE TERRY (signed)
Secretary

RESOLUTION OF ESSEX COUNTY COUNCIL OF CHURCHES

The Board of Directors of the Essex County Council of Churches, meeting in special session on July 3, 1947 in Newark, N. J., discussed the negation of democracy when discrimination against certain of our citizens is permitted, approved the following resolution and proposal pertaining to the new State Constitution:

WHEREAS, the history of our great Nation and of our great State is full of our American purpose to provide liberty and justice, equality of opportunity and freedom from discrimination; and

WHEREAS, we appreciate the great difficulties inherent in legal prohibitions about any matters which our citizens consider to be private rights and privileges; therefore, be it hereby

RESOLVED, that all employees of the State of New Jersey, and of every political, governmental, educational, or other corporate public body in the State, which receives all or any part of its funds from public taxation of any type or kind, shall be chosen, shall serve, and shall be treated in every way without any discrimination whatever because of race, color, creed, or national origin.

FRED E. MILES, *President*

GRACE M. FREEMAN, *Secretary*

July 3, 1947.

LETTER OF HON. ALBERT W. HAWKES

UNITED STATES SENATE
Washington, D. C.

June 27, 1947

Dr. Robert C. Clothier
President
Rutgers University
New Brunswick, New Jersey

Dear Dr. Clothier:

A number of my friends have asked me to write you to the effect that I am on record in the United States Senate as favoring equal rights for women.

If some way can be found to give women what is termed equal rights without destroying the special rights which it has always been considered they are entitled to, then we will make real progress.

Perhaps the best course to find this way would be in giving the matter some consideration in connection with the new Constitution, so far as New Jersey is concerned.

I wish you success in this very difficult work and remain, with kindest personal regards,

Sincerely yours,

A. W. HAWKES

AWH:jr

STATEMENT OF HON. ROBERT C. HENDRICKSON¹

In the 1844 Convention, speaking on the subject of a Bill of Rights, Mr. Chief Justice Horneblower had this to say: "We have now arrived at a period when we should discard the lesson which we have learned from our ancestors who were compelled to ask crowned heads for a bill of rights. What do we want them for? Why shall we tell ourselves what our rights are or protect ourselves against ourselves?"

Had I been a member of that Convention, I would have said to the learned Chief Justice, as I now say to you gentlemen on the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions of the 1947 Convention, "that to the end that we may ever be deeply conscious of the struggles and unselfish sacrifices of the generations now past—those men and women who first established the right of free men and then maintained them from the days of the Magna Carta, it is well for us to have before us a declaration of principles in which those rights are firmly embodied." If it served no other purpose but to remind us to be grateful, in this respect I would urge a Bill of Rights. But with the modern trends and tendencies in the world today, there is a much more important reason than this for incorporating in any new draft of a Constitution—be it here in America or abroad—a clear, concise and specific statement of the rights and privileges of every citizen, to constantly remind those who would either encroach upon or usurp the inherent rights of the individual that the spirit of the Magna Carta still lives, and that today, enlarged as it has been by greater vision, its power to deal with any force which might oppose it will be felt with greater speed and efficacy than ever before in the history of the world.

The new Constitution of New Jersey should have a Bill of Rights and Privileges to remind even the most well intended persons and movements in the world today, that New Jersey will tolerate no abuse of the rights of a free people.

In any consideration of the text which a Bill of Rights should follow, I have only this to say:

First: We cannot deny that our present Bill of Rights, although devised 103 years ago, has stood the test of time; moreover, it compares favorably with similar provisions in our Federal Constitution as well as those of our sister states.

Second: The judicial interpretations thereof are by and large clear and to the point and well understood by lawyers and laymen alike.

¹ Statement before the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, Wednesday, July 16, 1947.

Third: All efforts to revise our Constitution in recent years have without exception endorsed the basic principles enunciated in our present Bill of Rights.

In the report of the Commission on Revision of the New Jersey Constitution in 1942, we advocated only one substantial change, namely, a new paragraph (it appears in our draft paragraph 19) guaranteeing every citizen or taxpayer the right of restrain any violation of the Constitution. This was based upon the fact that under the present Constitution a citizen who believes an act of the Legislature authorizing an expenditure of public money violates the Constitution, cannot now prevent the expenditure, unless he can show that the injury to him is different in kind or degree from what every other citizen suffers. This new section would have wiped out this legal impediment and tended to bring the State Government under effective public scrutiny and control.

Other than this proposal, all other suggested changes in the 1942 draft were of minor importance. However, I assume they should for the purpose of the record be treated with briefly. From the Preamble down through paragraphs 1 to 6, inclusive, there were no changes.

In paragraph 7, which guarantees the right to trial by jury, the Commission for obvious reasons substituted the word "persons" for the word "men"—the reason being the juries consist of both sexes. There were no changes in paragraph 8. In dealing with paragraph 9 the 1941 Commission felt that New Jersey should be brought more into line with the Federal Constitution and so it urged this paragraph be amended to read "a capital or other infamous crime," instead of "a criminal offense." This, of course, would decrease somewhat the scope of the guarantee but was advocated on the theory that the individual benefits where minor crimes are speedily disposed of by competent judges in the local community. On this correction the Commission further advocated the removal of the words "or in cases cognizable by justices of the peace." The purpose of this change is also obvious—we had advocated the abolition of this office.

As to paragraphs 10 through 15 we suggested no changes. In paragraph 16 we offered the following: "Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation," to replace the words, "but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made."

No change was suggested in paragraphs 17 and 18.

I have already treated with paragraph 19, which was entirely new and provided that any citizen or taxpayer may restrain the violation

of any provision of the Constitution by a suit, with leave of the Superior Court upon notice to the Attorney-General.

No change was offered in respect to paragraph 20.

Except to reiterate that the Bill of Rights and Privileges as it presently exists has nobly stood the test of time and the strain of many changes in our social and economic progress, I shall have no further comment upon either the efforts of the 1844 Convention or those of the Revision Commission.

I therefore have only these suggestions, and they are entirely personal, to add. I think there should be included in the Bill of Rights, four major additions:

1. In paragraph 4 of Article I, I would strike the words "merely on account of his religious principles" and substitute the words "because of his race, color, religion or national origin." Thus, the paragraph would read: "There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right *because of his race, color, religion or national origin.*"

2. I would at some appropriate place add a completely new paragraph which would declare a principle that is now well established by judicial interpretation of the Federal Constitution, namely, that the right of workers to organize and bargain collectively shall not be impaired.

3. I would add to paragraph 3 a provision which was rejected as an amendment in the 1844 Convention, namely, "but liberty of conscience is not to be construed to excuse acts of licentiousness, or justify acts inconsistent with the peace and liberty of the State." Gentlemen, I offer this to preserve those sacred institutions which have given America unsolicited and unasked supremacy in the world today—the church, the home and the school—to protect us against the invasion of communism and its counterparts.

4. I would add a provision to direct the citizens' attention to his full responsibilities of citizenship—not to restrain him or to limit his rights, but to remind him of those inherent duties which go hand in hand with his inherent rights and privileges. It would be more or less in the language of the "Model State Constitution" proposed by the Committee on State Government of the National Municipal League. It would say: "These rights carry with them corresponding duties to the State."

Now, because your Committee has one more extremely important function, perhaps the most important of all in this Convention, I would say just a few words on the subject of amendments and revision:

It has been well said that "no group of men in a Convention, no

matter how wise or devoted to the public interest, can foresee the problem which changing conditions may bring about in the future—thus they should not seek to impose their wills and judgments based upon existing conditions, upon generations yet to come.”

To us, today, it is quite apparent that with all their good intentions, those wise and devoted patriots of the 1844 Convention unintentionally imposed upon succeeding generations an amending clause which has down through the years, to put it mildly, given very little satisfaction.

As in the case of so many really “good lawyers,” those men yielded to the advice of their “clients” and drafted a will which has all too frequently, through the years, defeated its very purpose. I am sure that if the delegates of the 1844 Convention could be with us today, they would be the first to admit that their conception of the amending process was based upon the extreme conservatism of the period in which they lived, and that in its general application it has been found wanting. On the other hand, with all its shortcomings, as I look over New Jersey’s history since 1844, I must concede that as cumbersome and awkward as our present amending clause is, the error of its authors in certain periods of its application might well be termed a blessing in disguise. Thus, in our effort to correct its faults, let us not swing too far in the opposite direction, else we might as well dispense with a Constitution altogether and try one of the several noble yet ill-fated experiments of the past.

This I say to you with all the emphasis I can command—you cannot have *constitutional government with an amending clause that will permit changes with changing whims*, whether those whims be of the Executive, the Judicial, the Legislative, or even the people, for there are occasions when the amending process will be needed to protect us against ourselves, at least momentarily. Thus, recognizing the frailties of human nature, you should, and I am sure you will, write a clause which will be adaptable to changes of modern living and yet provide a form of check and balance which will prevent the people of New Jersey in some cycle of unrest or depression from yielding to impulses which over the long pull would be disastrous.

Obviously, your deliberations on this subject will present two major problems: (1) the amending clause, and (2) revision. On the first of these, I would advise the adoption of the Article proposed by the Commission on Revision in 1942 without a change. It was because that Commission saw the need of tempering the demand for speed and accomplishment with an element of caution, that we compromised on the text which we submitted in our report. As you can quickly see upon reading that text, it changes the present amending process in only two respects: first, it replaced the requirement of passage by two successive Legislatures, with passage by one Legis-

lature and by a two-thirds vote, and secondly, the submission of amendments at a special election, which is now mandatory, was changed to submission at a general election. With these changes, the people can be assured that if there is need for an amendment which calls for maximum speed, they will be in a position to vote upon the proposal within a period of one year. On the other hand, if the merit of the proposal is at all doubtful, action should be delayed, and the requirements of a two-thirds vote of the members of each House will, in such a situation, provide the necessary delay. Of course, it will be argued by some that a two-thirds vote is excessive, but I point out from years of experience in the legislative halls, that if a proposal has genuine merit, then it is ordinarily just as easy to obtain 14 votes in the Senate as 11, and two-thirds of the Senate equals 14. In fact, all the "boys" in the Legislature want to be in on anything which is likely to look really good or has an appeal to the people, and in most instances our legislators know how the people feel. If you don't believe it, look at the number who remain for successive terms. This is perhaps one of the reasons why I have no real enthusiasm for the so-called "popular initiative" proposals.

Gentlemen, ours is a representative form of government, and if we ever come to the time when we must have plebiscites on all issues which are properly legislative responsibilities, then I want to start "packing" in search for good, old-fashioned dictatorship, for government by the masses is the first step toward the end of the type of democracy that has given us our abundant blessings. If our legislators do not take their responsibilities seriously or meet them honestly, we must teach them by the ballot that they must do so. We cannot evade our responsibilities by asking or assuming additional responsibilities which history has taught us that for practical reasons we can never meet. The scheme did not work in Greece, it did not work in Rome, and it won't work here—so let us hold to the concept of government which under Divine guidance has stood the test of time, and become the last bulwark, indeed the only hope, of free men the world over.

Let us give credit where credit is due and say by our action in this Convention that those men who conceived and established our federal framework were the equals, if not the superiors, of any group in the world's history, in the treatment of human rights through the medium of the science of government. God grant that free men may always have the protective cushion which legislative bodies provide, to take the shock when the masses stumble from their own blindness. Without this protective process there would be no free men.

So much for "popular initiative" in respect to the amending process.

Now, as to revision, you have been urged by brilliant, able and conscientious men and women—real patriots in the truest sense—to write a clause which would provide in effect an automatic referendum whereunder conventions would be called at regular intervals. This general scheme has been followed in some seven states, with the period of the intervals between conventions ranging from seven to twenty years. I concede that there are definite advantages which go with such a provision, but I would also point out that there are also attendant dangers. Here again we have the parallel of the lawyer drafting a fine, high-minded, high-sounding trust clause imposing certain mandatory requirements on the trustee to protect beneficiaries, only to find that unforeseen events not only make the execution of the trust extremely awkward but also actually impose hardships on the beneficiary.

I suspect that with an automatic referendum for revision in our Constitution, the question, as has been the case in all the States which have it, would carry every time it was submitted to the people. I am sure that this would be so. Thus it can well follow that we might one day have to meet in a constitutional convention during a period of crisis or civil strife which would produce, not a Constitution, but an easy beginning of the end of all that we revere in our system of government. Again, we might be called upon to act in the midst of a war crisis which would so defect and curtail sound thought and action that the people of New Jersey would suffer many serious economic disturbances in the post-war era which followed—disturbances and consequences which under a well conceived system of checks and balances, the kind you are here to draft, would be avoided. Then there is always the possibility that the referendum might direct a convention when actually there is not the slightest demand for any change, with the result that we would get a change which might be most unsatisfactory. The New York Convention of 1938 constitutes a splendid example of exactly what I mean in this respect. Anyone familiar with the present New York Constitution will concede the fact that it was no real improvement upon its predecessor, but is filled with a mass of legislative material which has no place in a Constitution. This was the product of an invitation to make changes when there was no real need for those changes.

I do agree that we should deal with the problem of revision by an affirmative statement, so that there is no question as to the Legislature's right to initiate the call. I would also agree that we should require popular vote approval of the legislative proposal to call a convention. But beyond this I would not go, in respect to conventions. I think that the manner in which this Convention was established and assembled is a perfect answer to those who urge additional processes for bringing on and operating a convention. That

there should be ratification of the convention's proposals by the people, there can be no really serious question, although I know it was the American practice until 1840 to put constitutions in effect without popular approval, and even as late as 1902 Virginia adopted a constitution without popular approval, despite specific directions to the contrary.

In concluding my views on the subject of revision by conventions, I cannot emphasize too strongly that I am opposed to periodic or automatic conventions. I would, however, accept with general enthusiasm a clause which would allow for the procedure suggested by the New Jersey Commission on Revision in 1942 whereunder the Legislature could transform itself into a revision commission and submit its product to the people. This might in some crucial periods of our history be our salvation.

In the preparation of your draft Article on this subject you will probably be tempted to include implementary details for both amendments and revision, as, for example, minutiae to eliminate need for certain supplementary legislation. May I caution against this? To legislate in the amending or revision clauses of a constitution is just as unsound as legislating in any other article or clause. As I have said in my appearance before the other Committees of this Convention, be brief, to the point, and sufficiently broad and general in the text to make the document adaptable to the need—easy to understand and sufficiently elastic to give your government a freedom of movement to meet the changes of our fast-moving world.

In conclusion, may I express the hope that the spirit which has dominated this Convention thus far will prevail unto the end. If it does, the devotion to duty which I have thus far seen is certain to produce a document which the people will accept with both enthusiasm and gratitude. I shall always remember my appearance here among the most inspiring incidents of all my public activities.

RESOLUTION OF JEWISH WAR VETERANS OF
THE UNITED STATES, DEPARTMENT OF
NEW JERSEY

WHEREAS, a State Convention has been called for the purpose of amending the Constitution of the State of New Jersey; and

WHEREAS, veterans of the State of New Jersey have enjoyed certain privileges which have been protected under the present Constitution;

IT IS THEREFORE, RESOLVED, that the Jewish War Veterans of the United States, Department of New Jersey, at its 14th Annual Encampment held in Asbury Park, New Jersey, on the 8th day of June, 1947, favors the incorporation in the proposed new Constitution of provisions which will preserve the rights and privileges presently enjoyed by veterans.

IT IS FURTHER RESOLVED, that copies of this resolution be forwarded to the Constitutional Convention in session at Rutgers University, New Brunswick, New Jersey.

MEMORANDUM OF
JOINT COMMITTEE ON CONSTITUTIONAL
BILL OF RIGHTS

Proposed Amendments to Bill of Rights (Article I) and
Tax Provision (Article IV)

Submitted July 8, 1947

In behalf of its affiliated organizations and individuals, the Joint Committee on Constitutional Bill of Rights respectfully submits to this Convention the following proposed amendments to Article I and Article IV of the present Constitution: *

ARTICLE I.

Sec. 4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right *because of his race, color, religion or national origin.*

Sec. 5a. (New) No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination, because of race, color, religion, or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law.

Sec. 16. Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made. *Property taken for public use shall be enjoyed without discrimination because of race, color, religion, or national origin.*

Sec. 19a. (New) The right of workers to organize and bargain collectively shall not be impaired.

ARTICLE IV.

Sec. 7 (12). Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. *Exemption from taxation may be granted by law, but no exemption shall be enjoyed by any charitable or educational institution, other than a religious or sectarian institution, which denies to any person the use or enjoyment of its facilities because of race, color, religion, or national origin.*

1.

It is particularly appropriate that the State of New Jersey should be revising its Constitution and re-examining its Bill of Rights at the same time that the United Nations is engaged in drafting an International Bill of Human Rights for all humanity. The Ameri-

*Underlined [italicized] matter added; Sections 5a and 19a are new.

can people may well be proud that its original contribution to the evolution of constitutional government—a bill guaranteeing basic human rights—has been adopted by the United Nations. The State of New Jersey has special reason to be proud, for its Bill of Rights is unquestionably one of the finest among all of the state constitutions, and many of its provisions are included in the various proposals now being submitted to the Drafting Committee of the United Nations Commission on Human Rights.

2.

The Constitution which now governs the State of New Jersey was agreed upon by the delegates of the people in convention at Trenton between May 14 and June 29, 1844, and was ratified at an election held August 13, 1844. This Constitution is the second in the history of the State, the first having been promulgated at a constitutional convention on July 3, 1776, the day before this country declared its independence of Great Britain. The Convention now assembled is entrusted with the duty of re-examining the provisions of the 1844 Constitution in the light of the century which has elapsed and of recasting and revising that Constitution so that it more closely corresponds to the needs of today.

While the administrative relations between a government and the people which has created that government must develop and change to remain in harmony with the development and change of a dynamic society, the basic human values which constitutions declare and protect are unchanging. The premises underlying our present Constitution (set forth in sections 1 and 2 of Article I), that "All men are by nature free and independent, and have certain natural and inalienable rights," and that "All political power is inherent in the people," are as valid today as they were when first declared. Indeed, we have but recently engaged in a tragic world conflict to test the validity of these premises, and the adoption of those premises by the federation of nations which arose out of that conflict establishes their validity for all time.

For this reason we do not propose that this Convention alter in even the slightest the present provisions of Article I of the 1844 Constitution. Indeed, we urge strongly that nothing shall be detracted from that Article. Nevertheless, we do believe that the rapid evolution and development of our economic and social system during the past century requires certain additions to give particular 20th Century meaning to the basic truths. In 1844, a threat to the basic truth of equality existed in the possibility that by reason of difference in the forms whereby people worship their Creator, some people might be denied political rights. The Constitution therefore guaranteed (Article I, section 3) that "no religious test shall be required as a qualification for any office or public trust." A century later, im-

pairment of the basic truth of equality manifested itself in the undemocratic practice of many employers to refuse employment to persons of certain racial or religious groups. Recognizing that the truth of equality is as valid today as in 1844, our Legislature enacted the law against discrimination (chapter 169 of the Laws of 1945) even though no provision of the 1844 Constitution expressly authorizes such legislation. Today, the principal threats to the truth of equality are found in practices of discriminations because of race, color, religion or national origin in the fields of employment, education, enjoyment of property and pursuit of a livelihood in a business, trade or profession. The purpose of the proposed amendments to the 1844 Constitution which we respectfully submit for the consideration of this Convention is to recognize and declare that the basic truth of equality is as valid in these areas as in the political area.

3.

Our first suggested amendment seeks to add "race," "color" and "national origin" to the prohibition contained in section 4 of Article I against denial of any civil right because of religious principles. For the purpose of uniformity we suggest that the word "religion" be substituted for "religious principles." The terms are synonymous, but the former is generally used in constitutions and statutes and is stylistically preferable in combination with race, color and national origin. The section as amended in accordance with our suggestion would therefore read as follows:

"There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right *because of his race, color, religion or national origin.*"

The substance of the amendment is discussed hereafter in relation to our suggested new section.

4.

The heart of our proposed amendment is a new section, which we have designated section 5a, to follow section 5 of Article I of the present Constitution. The proposed new section reads as follows:

"No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination, because of race, color, religion or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law."

Before analyzing the specific provisions of this section, its underlying philosophy should be briefly considered. The section rests upon the "self evident truth" declared in our Declaration of Independence that "all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness." A similar provision is contained in our present State Constitution (*Article I, section 1*). These "inalienable rights," more specifically detailed, are recognized and guaranteed in the Bill of Rights sections of our Federal and State Constitutions, and are generally designated as "civil" rights. Anything less than complete equality in the "pursuit of Happiness" and enjoyment of civil rights is completely inconsistent with our national and state policy and is repugnant to our democratic concepts. Distinctions based on race, color, religion or national origin are abhorrent to our spiritual and political conscience.

These truths have been recognized by all branches of our Federal and State Governments, in the international as well as domestic arenas. Our Supreme Court, speaking through the late Chief Justice Stone, stated it thus:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to free people whose institutions are founded upon the doctrine of equality." *Hirabayshi v. United States*, 320 U. S. 81, 100 (1943).

Justice Murphy, concurring in the same case stated:

"Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war. We cannot close our eyes to the fact that for centuries the Old World has been torn by racial and religious conflicts and has suffered the worst kind of anguish because of inequality of treatment for different groups." (*pp.* 110-111).

The validity of this principle has been recognized by our government in the international field. The relationship among the various racial, religious and ethnic groups which make up a nation is a matter of international as well as national concern. The United States Government has made representation to foreign governments in respect to their treatment of minority nationals. Treaties concluding both world wars contain provisions requiring the signatories not to discriminate against their national and racial minorities. The Charter of the United Nations, ratified by the Senate of the United States and signed by the President (August 8, 1945) imposes upon all signatories the duty to "promote . . . uniform respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion." (*Article 55c*).

To sum up, it may be said, again in the words of Chief Justice Stone, that distinctions based on race, color, religion or national origin are "irrelevant and invidious." *Steele v. Louisville & N. R. Co.* 323 U. S. 192 (1944). As will be indicated in our analysis of the

specific provisions of our proposed amendment, substantial recognition of this principle has been given by the Legislature of our State. Here we need mention only the statement of our State Supreme Court, that "the dignities, equalities and rights of citizenship cannot be legally denied to members" of any particular race. *Bullock v. Wooding*, 123 N.J.L. 176 (1939).

5.

The first sentence of our proposed amendment reads:

"No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty or property without due process of law."

This provision, taken from the Fourteenth Amendment of the Federal Constitution, requires little discussion. Its absence from the present State Constitution is explained by the fact that the State Constitution antedated the Fourteenth Amendment. In slightly varying forms, this provision is contained in the constitutions of most of the states.

6.

The provision in our proposed new section that "Neither the State nor any political subdivision or any agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil right . . ." constitutes a limitation on both state and private action.

The prohibition against discriminatory action by a state or its subdivisions is merely a codification of existing case law under the Fourteenth Amendment. The United States Supreme Court has consistently invalidated action by states or municipalities which attempted to give legal effect to the irrelevancy of race, color or religion. It would unduly extend the scope of this memorandum to discuss in detail the decisions in which states or municipalities were restrained from such discriminatory action. A few may be mentioned as illustrative.

In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the court invalidated a municipal practice of refusing to persons of Chinese descent permits to engage in the laundry business, the court holding that the administration of a municipal ordinance for the carrying on of a lawful business violates the Fourteenth Amendment if it makes arbitrary discriminations founded on differences in race. In *Buchanan v. Warley*, 245 U.S. 60 (1916), the court invalidated a racial zoning ordinance. In *State ex rel. Gaines v. University of Missouri*, 305 U.S. 337 (1928), the court held that a state could not deny to Negroes professional educational opportunities offered to persons of the white race. These as well as other cases which may be cited constitute the basis of our proposed provision forbidding discriminatory

action by "the State or any political subdivision or agency thereof."

The restraint on the part of similar action by "any person, group, association, corporation or institution" is necessitated by the holding in the Civil Rights Cases, 109 *U. S.* 3 (1883), that the Fourteenth Amendment prohibits only state or municipal action and not by private individuals or groups. It is the duty of the State to guarantee that racial or religious discrimination shall not be practiced by non-governmental agencies. The Supreme Court on another occasion expressed it thus:

"The equality of the rights of citizens is a principle of republicanism. Every republican government is duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there." *U. S. v. Cruikshank*, 92 *U. S.* 592 (1875).

Our neighbor, the State of New York, acknowledged this duty in its 1938 constitution, declaring that:

"No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or institution, or by the State or any agency or subdivision of the state." *Article I, section 11.*

As will be indicated hereafter, our Legislature has in numerous specific instances recognized this principle. It is the purpose of our proposed amendment to make this recognition universally applicable and to accord it a constitutional basis.

7.

The proposed provision that "any writing, agreement, or practice in violation hereof shall be void and unenforceable" codifies fundamental contract law. Since the constitution is the supreme law of the state, any agreement or practice in violation of its letter or spirit is unenforceable. 13 *Corp. Juris*, p. 424. Nevertheless, the question occasionally arises as to whether a particular constitutional provision is or is not self-executing (see *e.g.*, *Groves v. Slaughter*, 15 *Pet.* (U. S.) 449, 452); for that reason, it is desirable that the Constitution specifically set forth the consequence of violation.

Such a provision is by no means unprecedented. The Fourteenth Amendment itself provides that "all debts, obligations and claims" growing out of the Civil War or out of the institution of slavery "shall be held illegal and void." Many state constitutions prohibit agreements or practices in violation of constitutional provisions which protect the rights of laborers and expressly provide that such contracts or agreements shall be void and unenforceable. See *e.g.*, *Arizona, Constitution* (1912), *Article XVIII, section 3.* It is submitted that the Convention should clearly and expressly declare in the Constitution that agreements or practices in violation of the Bill of Rights shall be void and unenforceable.

8.

Our proposed new section seeks to specify certain particular civil rights which are the principal object of its protection. These, as will be shown, have already been impliedly recognized by our national and state legislatures and courts. The purpose of our amendment is to accord to these specifications the constitutional dignity to which they are entitled.

Our proposed new section states first that the "rights and privileges" already "enumerated in this Article" shall constitute civil rights protected from discrimination for reasons of race, color or religion. These rights and privileges include freedom of worship (section 3), of speech and press (section 5), of security from unreasonable searches and seizures (section 6), and of assembly (section 18), as well as the right of trial by jury (section 7) and a fair and speedy prosecution of criminal charges (section 8). Any action by the State or a subdivision or agency thereof, or even by a private individual or group, which would tend toward racial or religious discrimination in the exercise of these rights would be violative of the Constitution and void.

9.

The first of the civil rights expressly enumerated in our proposed new section is the right to be free from racial or religious discrimination in obtaining employment. That this is a fundamental right is too patent to be gainsaid. As stated by the Temporary Commission Against Discrimination which drafted the New York law against discrimination: "The right to life, the most primary of all civil rights, can have no fulfillment without the right to work." Our own Court of Chancery declared that denial or curtailment of the right to work by reason of race, color, religion or national origin deprives minorities "of the constitutional right to earn a livelihood." *Carroll v. Local* 269, 133 *N. J. Eq.* 144, 147. Our Legislature has declared that such discrimination is

"a matter of concern to the government of the State, and . . . threatens not only the rights and proper privileges of the inhabitants of the State, but menaces the institutions and foundation of a free democratic State." *P.L. 1945, c. 169, sec. 3.*

Accordingly, our Legislature stated that:

"The opportunity to obtain employment without discrimination because of race, creed, color, national origin or ancestry is recognized as and declared to be a civil right." *Ibid, sec. 4.*

Partial effect had been given to this principle in the statute forbidding employment discrimination in defense industries (*P.L. 1942, c. 114*), public works (*R.S. 10:1-10*), and state, county and municipal civil service (*R.S. 11:22-11, 11:17*). Practically complete effect was given by the enactment in 1945 of the law against discrimination (*P.L. 1945, c. 169*). Our amendment seeks to create an express

constitutional basis for these and similar legislative enactments, thus eliminating any possible doubts of constitutionality, no matter how ill-founded.

10.

It is of vital significance that, in respect to the provisions relating to employment and education contained in our proposed amendment, religious corporations or associations are expressly excluded. Freedom of religion is a basic component of democracy, and true freedom of religion is impossible if the State were to possess power to control or regulate the internal affairs of religious bodies. Our Nation and our State are founded on the rock of religion, uncontrolled and undominated by government. The manner whereby a man worships his Creator is a matter for regulation by his own conscience; it is not subject to dictation by parliaments of men. It is not our intention to weaken in the slightest the command of the 1844 Constitution that:

"No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience."
Article I, section 3.

For these reasons we have been careful to exclude religious bodies from the operation of the provisions relating to discrimination in employment and education.

11.

In the 20th Century, equality of opportunity in employment cannot exist without a co-equality of opportunity in education. Our complex economy demands educational training for its responsible positions. It is unrealistic and ineffectual, if not hypocritical, to guarantee to persons of all races and religions the right to practice medicine or engineering or law without guaranteeing them the right to be free from racial or religious discrimination in obtaining admission to medical or engineering or law schools so as to acquire the training which would enable them to practice those professions.

But it is not only because equality of employment opportunity requires a concomitant equality of educational opportunity that we have included freedom from discrimination in education as a civil right entitled to constitutional protection. It is our earnest conviction that the "pursuit of happiness" guaranteed by our 1844 Constitution (*Article I, section 1*) is impossible of attainment without complete equality of educational opportunity. Rarely can supreme happiness be attained by the uneducated and the illiterate. The treasury of joy found in poetry and drama, in music and in art, is denied to them. This is recognized by our people, as evidenced by the fact—of which we can well be proud—that our State expends more per child annually for public school education than any other state in the Union (Report of National Education Association, cited

in statement by Rabbi Stephen S. Wise to the United States Senate Committee on Labor and Public Welfare, April 25, 1947). Freedom from racial or religious discrimination in education is entitled to governmental protection. Our State Legislature has recognized this by enacting section 18:14-2 of the Revised Statutes, which provides, in part:

“No child between the ages of four and twenty years shall be excluded from any public school on account of his race, creed, color, national origin or ancestry.”

The importance which our Legislature ascribed to equality of educational opportunity is attested by the penalty imposed for its deprivation. The balance of the section reads as follows:

“A member of any board of education who shall vote to exclude from any public school any child, on account of his race, creed, color, national origin, or ancestry shall be guilty of a misdemeanor, and punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail, workhouse, or penitentiary of the county in which the offense has been committed, for not less than thirty days nor more than six months, or by both such fine and imprisonment in the discretion of the court.”

Nor has recognition that equality of educational opportunity is a civil right entitled to governmental protection been limited to public school education. Our Civil Rights Act declares it a misdemeanor for “any * * * public library, kindergarten, primary and secondary school, high school, academy, college and university, or any educational institution under the supervision of the regents of the State of New Jersey” to deny admission to any person because of race, creed or color. *R.S. 10:1-5*. Here, as in the case of employment, the purpose of our proposed new section is to accord constitutional sanction to existing legislative policy.

12.

While our proposed amendment of subdivision 12, Section 7, Article IV of the 1844 Constitution is not technically included in the Bill of Rights, it is impliedly part of our proposed new section and should logically be discussed here. Our suggested amendment reads as follows:

“Exemption from taxation may be granted by law, but no exemption shall be enjoyed by any charitable or educational institution, other than a religious or sectarian institution, which denies to any person the use or enjoyment of its facilities because of race, color, religion, or national origin.”

Little need be said in support of this amendment. To us and, we believe, to all men of good will, its fairness and justness are patent. Exemption from taxation is in effect a public subsidy—a grant of funds raised by taxing all the public. A non-sectarian educational institution which closes its doors to a portion of the people should not receive the financial aid of a government representing all of the

people. Taxation without sharing the benefits of taxation is no less tyranny than taxation without representation.

13.

Nor does our proposed inclusion of equality in obtaining public accommodation require much discussion. Our Civil Rights Law already forbids racial or religious discrimination in the denial of access to places of public accommodation. *R.S. 10:1-5*. Such discrimination is declared to be a misdemeanor and in addition gives rise to a right to bring a civil action. *R.S. 10:1-7*. That this action is brought "in the name of the State of New Jersey" indicates that our Legislature deems that it is the people, even more than the discriminated individual, which is aggrieved by such anti-democratic practices. Here, too, we seek constitutional recognition of legislatively declared policy.

14.

Our proposed new section declares that freedom from racial or religious discrimination "in acquiring or enjoying any property" is a civil right accorded constitutional protection. This is far from a novel proposition. The very first sentence of the 1844 Constitution states:

"All men are by nature free and independent, and have certain natural and unalienable rights, among which are these of enjoying and defending life and liberty, *acquiring, possessing and protecting property* and pursuing and obtaining safety and happiness."

Some two decades after this declaration, the Congress of the United States enacted the Civil Rights Law which provides, in part:

"All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." 8 *United States Code, section 42*.

It is our proposal that this principle be expressly protected by the new Constitution against legislative and private infringement, and we have therefore included it in our suggested new section.

15.

What has been said heretofore establishes clearly that freedom from racial and religious discrimination "in engaging in any business, trade, or profession, or otherwise pursuing a livelihood" is and should be a civil right, and we need, therefore, say nothing further to justify its inclusion in our proposed new section.

Our proposed new section does not limit the civil rights subject to its protection to those specifically enumerated therein. Its concluding phrase expressly authorizes recognition of other civil rights "by statute or common law." The purpose of this clause is to provide for the further evolution and development of our social, political

and economic society in its progress toward the achievement of equality and brotherhood.

16.

Our proposal includes an amendment to Article I, section 16 of the 1844 Constitution by the addition of the following sentence:

“Property taken for public use shall be enjoyed without discrimination because of race, color, religion or national origin.”

What we said in respect to tax exemption applies with equal force here. “Public use” means use by all the public, not parts thereof selected on the basis of race or religion. If property is seized under the power of eminent domain for use as a library or a railroad or a hospital, that library, railroad or hospital must be open to all the people without racial or religious discrimination.

The justice of this principle is self-evident. Its legality is equally clear. *Connecticut College v. Calvert*, 87 Conn. 421 (1913); *University of Southern California v. Robbins*, 37 Pac. 2d 163 (Calif. App., 1924). We urge its recognition in the new Constitution.

17.

The final provision of our proposed amendment is a new section to be added to Article I reading:

“The right of workers to organize and bargain collectively shall not be impaired.”

Collective bargaining by labor accords with our national and state public policy. The proposed new section accords express constitutional recognition to that policy. This provision does not, nor is it intended to restrict legislative action aimed at eliminating or curbing any labor union abuses which may manifest themselves and which require corrective legislative action.

This is a moment of deep significance in the history of our State. This Convention is faced with an opportunity to make a great step forward in the continuing progress and development of American constitutional democracy. Adoption of the amendments which we propose will, we believe, breathe a new vitality and meaning into our revered Bill of Rights. It will be a guiding torch for other states to follow. Respectfully we commend it for the deliberations of this Convention.

Respectfully submitted,

HERBERT H. TATE, *Chairman*,

Joint Committee on Constitutional Bill of Rights

LEO PFEFFER, *General Counsel*

Dr. Walter G. Alexander

Andrew Beamer

Bertram C. Bland

Mrs. J. Murray H. Booth

Joseph P. Bowser, for Urban Colored Population Commission
John Cervase
Professor Albert Einstein
Jerome C. Eisenberg
A. E. Flournoy, for Camden County Ministers' Association
L. Hamilton Garner, for Newark Urban League
John Green, for Industrial Union of Marine & Shipbuilding
Workers, C.I.O.
George B. Greenleaf, for Greater Newark C.I.O. Council
Carl Holderman, for N. J. State C.I.O.
Anne P. Hughes
Louis P. Marciante, for N. J. Federation of Labor
Thomas McCann
Mrs. Albert B. Melnik
Vincent J. Murphy
National Council of Jewish Women
Hon. Joseph B. Perskie
Rabbi Joachim Prinz, for American Jewish Congress
Elisabeth S. Rogers
Alan V. Lowenstein, for the American Jewish Committee
Philip Rosenberg, for Northern New Jersey Council of B'nai B'rith
Mae K. Rubin, for the League of Women Shoppers, Inc.
Hon. Joseph Siegler
Howard G. Taylor, Jr.
Katharine Van Orden, for N. J. Independent Citizens' League
Harry L. Wachtel, for Jewish War Veterans of the United States
Reverend William M. Weber
Edward Yeomans, for National Farmers' Union

FINAL DRAFT OF PROPOSED AMENDMENTS
TO NEW JERSEY BILL OF RIGHTS¹

presented by

JOINT COMMITTEE
ON CONSTITUTIONAL BILL OF RIGHTS

ARTICLE I

Sec. 4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right *because of his race, color, religion, or national origin.*

Sec. 5a. (New) No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination, because of race, color, religion, or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law.

Sec. 16. Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made. *Property taken for public use shall be enjoyed without discrimination because of race, color, religion, or national origin.*

Sec. 19a. (New) The right of workers to organize and bargain collectively shall not be impaired.

ARTICLE IV

Sec. 7(12). Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. *Exemption from taxation may be granted by law, but no exemption shall be enjoyed by any charitable or educational institution, other than a religious or sectarian institution, which denies to any person the use or enjoyment of its facilities because of race, color, religion, or national origin.*

¹ Underlined [italicized] matter, and Sections 5a and 19a, new.

RECOMMENDATIONS OF THE LEAGUE OF WOMEN VOTERS

*(Excerpts from the League's brochure, "Constitutional Changes,"
submitted to the Constitutional Convention in June 1947)*

BILL OF RIGHTS

The Bill of Rights is probably the strongest part of the present New Jersey Constitution. It is recommended that all parts of it be retained in the present form except for the modifications to paragraphs 9 and 16 which are suggested below. Three additional items are also recommended for inclusion.

Modifications

Paragraph 9—No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

Explanation—This phraseology omits the words "or in cases cognizable by justices of the peace." It is recommended to avoid all constitutional mention of the office of justice of the peace.

Paragraph 16—Private property shall not be taken for public use without just compensation. Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation.

Explanation—The wording suggested here is that of the 1942 draft, Article I, paragraph 16. It is recommended because it permits the State to take possession of property pending decision as to compensation.

Additions

1. Any citizen or taxpayer may restrain the violation of any provision of this Constitution by a suit in the General Court.

Explanation—Article I, paragraph 19, of the 1942 draft contains this suggestion. It is recommended because it strengthens the rights and privileges of all citizens.

2. Citizens shall have the right to organize, except in military or semi-military organizations not under the supervision of the State, and except for purposes of resisting the duly constituted authority of this State or of the United States. Employees shall have the right to bargain collectively through representatives of their own choosing.

Explanation—The phraseology used here is that of the "Model State Constitution," Article I, section 103. A provision for the right of labor to organize was contained in the 1942 draft, Article III, Section VII, paragraph 2. The wording above is recommended because it renders unconstitutional the formation of semi-military organizations such as the Bund. At the same time it gives to all

other organizations a constitutional guarantee as necessary as "free assemblage."

3. No person shall be subjected to any discrimination in his civil rights because of race, color, creed or religion.

Explanation—The above provision has an obvious place in the Constitution of any democracy.

* * * *

ELECTIONS AND SUFFRAGE

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen in odd-numbered years at a general election.

Explanation—The wording contained above is that of the 1944 draft, Article VIII, paragraph 1, with the phrase, "in odd-numbered years," added. It is recommended that all elections for state officers take place in odd-numbered years in order that the voters may give their undivided attention to state issues. If the conflict with federal elections is avoided the resulting shorter ballot will make possible a more informed voting public.

2. Subject to the provisions of this Article, every citizen of the United States who shall have attained the age of eighteen years, been a resident of this State one year, next before election, and who shall have been duly registered as a voter pursuant to law, shall be entitled to vote in the election of all officers that are now or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

Explanation—This recommended wording is that of the 1944 draft, Article VIII, paragraph 3, with the following three changes:

The voting age has been lowered from 21 to 18 years. This change is recommended in the belief that citizens of 18 are qualified to vote. A primary concern of New Jersey schools is the preparation of young people for the responsibilities and duties of citizenship. Most students, when they leave high school, are prepared to take on these duties and responsibilities with keen interest. The requirement that they wait until they are 21 to vote presents them with a situation in which there is no established medium for their participation in public affairs. This is contrary to the best interests of the young people themselves and of the State, which would benefit by securing a larger body of informed and interested voters. Georgia lowered the voting age to 18 in its new constitution adopted in 1945.

The requirement of five months' residence in the county has been eliminated, thus leaving all residence requirements except that of one year in the State to be determined by the law on registration. This change is recommended in view of the fact that today people move across county lines almost without realizing it. By so doing lifelong resident of New Jersey forfeit their votes in important state and national elections. Yet the New Jersey Election Law makes it possible for a newcomer to the State or a newly naturalized citizen

to cast his vote at the primary election with a residence of only seven months in the State and overnight in the county and voting district. The discrepancy between the Constitution and the law is manifestly unjust since it is well known that the primary election is often the decisive election in the selection of local and county officials, and even at times in the choice of Governor and members of the Legislature. Even if this discrepancy were removed it seems wise that in so densely populated a State as New Jersey the requirements for county residence as well as local should be fixed by law.

The words "in the election of" all officers have been substituted for "for" all officers. This change is recommended in order to make it clear that the Legislature may, if it chooses, provide, by law, for the use of the "proportional representation" method of voting in certain elections. The "Model State Constitution" uses this wording.

3. No idiot or insane person shall enjoy the right of an elector.

Explanation—This is the wording of the 1944 draft, Article VIII, paragraph 4, with the word "pauper" omitted. The deletion is recommended because experience has shown that it is impossible to determine that status justly, as a basis for disfranchisement.

4. Persons may be deprived by law of the right of suffrage because of conviction of crime.

Explanation—This is the wording of the 1944 draft, Article VIII, paragraph 5. It is recommended as preferable to an effort to define "crime" in the Constitution.

5. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while engaged in the civil or military service of this State or of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student at any institution of learning; nor while kept in any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

Explanation—This recommended wording is that of the "Model State Constitution," Article II, section 203, with the addition of the words "civil or military." The addition is suggested in view of the fact that there are now many citizens of the State in government service who are unable to be at home to vote. The Constitution should recognize the voting right of such public servants along with those in the armed services.

The statement concerning persons in certain institutions are included for the purpose of clarifying the confusion which now exists regarding the franchise of such individuals. At present a problem exists in governmental units where such persons constitute a considerable body of voters who have no genuine interest in, knowledge of, or participation in public affairs.

6. The manner in which and the time and place at which ballots may be cast by electors absent in the service of the United States or of this

State, and the manner of the return and canvass of such absentee votes, shall, at all times, be provided by law. The Legislature may also provide by law for voting by other absent electors and for the like return and canvass of their votes.

Explanation—This is the wording of the 1944 draft, Article VIII, paragraph 8, with the addition of a provision for “absentee voting” for those not in the service of the State or the United States. The addition is recommended in order to make possible a voting arrangement for the many citizens who find it necessary to be absent from their voting districts on election day. Most states make some provision for such citizens.

AMENDMENTS AND REVISION

1. Amendments shall be agreed to by a majority of both Houses of one session of the Legislature, and submitted to the people at a general election.

Explanation—The provision that a *majority* vote of both Houses be required is recommended in view of the fact that representation in the New Jersey Senate is not established on any basis of population. The requirement of a two-thirds vote would mean that 8 Senators elected by 9 per cent of the population could exercise a veto over Senators elected by 91 per cent of the population. A three-fifths requirement would give a similar veto to 9 Senators elected by 11 per cent of the population. Even under the majority requirement, 11 Senators elected by 16 per cent of the population could exercise this veto over Senators elected by 84 per cent of the population. It seems definitely undesirable to support any provision which allows a very small minority to thwart the desires of the large majority of the people.

The provision that amendments be approved by one session of the Legislature is recommended as an improvement over the present requirement of approval by two successive sessions. The latter provision has encouraged legislative irresponsibility by allowing a legislator to support an amendment one year, and to help keep it in committee the next, thus preventing action. There has also been difficulty in sustaining interest in a proposal over such an extended period of time, which accounts in part for the failure of many worthwhile amendments.

The provision that the people shall vote at a general election is recommended as an improvement over the present requirement of a special election. Special elections now cost about \$700,000, an unnecessary expense. Experience shows that few people vote in them regardless of how vital the issue, thus giving an organized minority unusual power.

2. Amendments shall be printed and on the desks of the legislators for 30 calendar days before a roll call vote is taken.

Explanation—This provision is recommended to assure all legislators ample time for careful study.

3. The present prohibition against amendments being submitted more than once in five years should be removed.

Explanation—This recommendation is made in order to remove one of the blocks to the modernization of the Constitution.

4. Submission to the people of the question of holding a constitutional convention shall be mandatory every 20 years, but the Legislature, in addition, shall have the right to provide for submission at any general election.

Explanation—This provision is recommended in order to assure the people that their right to a convention will not be infringed or unduly delayed. It would tend to eliminate continuous agitation for revision. The constitutions of eight states contain mandatory provisions for calling conventions, five requiring a referendum on the question every 20 years, one every 10 years and one every 7 years.

PUBLIC WELFARE

Neither the present New Jersey Constitution nor any of the proposed revisions have contained a Public Welfare Article. The proposals recommended below seem, however, to fit most logically under such a division, which is contained in the "Model State Constitution."

1. *Public Education.* The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State between the ages of 5 and 18 may be educated, and of such other educational institutions, including institutions of higher learning, as may be deemed desirable.

Explanation—This wording, contained in the "Model State Constitution," Article X, Section 1000, is recommended. The 1944 draft, Article III, Section VI, paragraph 7 contained a provision to provide public education for children from 5 to 18. The State is already providing grants for higher education in the form of appropriations for a State University, and for scholarships.

2. *Public Housing.* The State may provide for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto, in such manner, by such means, and upon such terms and conditions as may be prescribed by law.

Explanation—The wording of this proposal is contained in the "Model State Constitution," Article X, Section 1004. It is a permissive article which gives constitutional authority for activities which are now conducted in New Jersey under various legislative provisions.

3. *Public Health.* The protection and promotion of the health of the inhabitants of the State are matters of public concern and provision therefor shall be made by the State and by such of its civil divisions and in such manner and by such means as the Legislature shall from time to time determine.

Explanation—This proposal is contained in the “Model State Constitution,” Article X, Section 1001, and is a part of the New York Constitution, Article XVII, Section 3.

4. *Public Relief.* The maintenance and distribution, at reasonable rates, or free of charge, of a sufficient supply of food, fuel, clothing, and other common necessities of life, and the providing of shelter, are public functions, and the State and its civil divisions may provide the same for their inhabitants in such manner and by such means as may be prescribed by law.

Explanation—This proposal is contained in the “Model State Constitution,” Article X, Section 1002. It combines the New York State Constitution, Article XVII, section 1, and the Massachusetts Constitution, Amendments, Article XLVII.

5. *Conservation.* The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the State are public uses, and the Legislature shall have the power to provide for the same and to enact legislation necessary or expedient therefor.

Explanation—This proposal is contained in the “Model State Constitution,” Article X, Section 1005. It is adapted from the Massachusetts Constitution, Amendments, Article XLIX.

STATEMENT OF THE
LEAGUE OF WOMEN VOTERS OF NEW JERSEY
ON AMENDMENT AND REVISION OF
THE CONSTITUTION

(Presented by Mrs. Arthur C. Gillette, July 2, 1947)

The League of Women Voters recommends easing the Constitution's restrictive amending process. We believe the new charter should require that amendments be approved by a simple *majority*, as at present, of both Houses of the Legislature, but at *one* session, rather than as at present by two successive Legislatures; and then should be submitted to the people at a *general* instead of a special election.

As a result of the recognized difficulty of amending the Constitution, it is today essentially the same as it was in 1844. This static condition has resulted in making much progressive legislation impossible and has contributed to public apathy toward State Government. With the lesson of the past 100 years before us it would be folly to repeat the mistake of the drafters of the 1844 Constitution by so restricting the amending process that the new Constitution would be resistant to change.

We favor the requirement of a majority vote only. Even then 11 Senators, elected by 16 per cent of the population, could exercise a veto over Senators elected by 84 per cent of the population. Under the requirement of a two-thirds or a three-fifths vote, as urged by some groups, an even smaller minority could thwart the desires of the people.

We recommend that amendments be approved by one Legislature because it is too difficult to sustain interest in a proposal over the long period of time now required. Present-day complicated and fast-moving life demands the abandonment, and modern means of communication make unnecessary the retention, of the pedestrian pace of a century ago. There is no justification for an issue raised today having to wait about two years to get to the people.

We recommend the submission of amendments to the voters at a general election because special elections simply are an unnecessary expense.

Further, we suggest the requirement that amendments be printed and on the desks of the legislators for 30 calendar days before a roll call vote is taken, so that all legislators have ample time for careful study. This would also give the people an opportunity to be informed.

We advocate the removal of the present prohibition against amendments being submitted more than once in five years. This ambiguous provision would constitute a block to keeping the modernized Constitution up-to-date. The requirement of the votes of 11 Senators and 31 Assemblymen makes any such prohibition unnecessary. We have confidence this requirement is adequate to prevent irresponsible amendments being placed on the ballot.

We urge that the following additional provision be added to the Article on the amending process: "Submission to the people of the question of holding a constitutional convention shall be mandatory every 20 years, but the Legislature, in addition shall have the right to provide for submission at any general election." This provision is essential to assure the people that their right to a convention would not be unduly delayed. It would tend to eliminate the almost constant agitation for revision. Analysis of the new constitution of other states indicates a trend toward including this provision.

According to the Bill of Rights, "All political power is inherent in the people. Government is instituted for the * * * benefit of the people, and they have the right * * * to alter * * * the same, whenever the public good may require it." An amending clause that, in effect, makes amendment practically impossible is a denial of this right.

STATEMENT OF THE
LEAGUE OF WOMEN VOTERS OF NEW JERSEY
ON CONSERVATION¹

"The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the State are public uses, and the Legislature shall have power to provide for the same and to enact legislation necessary or expedient therefor."

The League of Women Voters recommends that this paragraph be included in the Constitution because the State already maintains this type of program in the College of Agriculture, in providing for state forests and parks, and in its Water Commission. We further recommend that this paragraph be one of several in the general field of public welfare and be included in a special Article entitled Public Welfare. Provisions of public education, public housing, public health and public relief might logically be included in an Article on Public Welfare. The main purpose of such an Article is to guarantee to the State ample authority to establish and maintain a complete program of public welfare services. Such an Article is a permissive Article and gives the Legislature the right to pass laws in this field.

¹ Presented by Mrs. Harold W. Corlett before the Committee on July 1, 1947.

LETTER OF THE LEAGUE OF WOMEN VOTERS
OF NEW JERSEY ON VETERANS' CIVIL
SERVICE PREFERENCE

Middlebrook Road
Boundbrook, N. J.
16 July, 1947

John F. Schenk, Chairman,
Committee on Rights and Privileges,
Constitutional Convention of New Jersey,
New Brunswick, N. J.

My dear Mr. Schenk:

The League of Women Voters has already presented to the Committee on the Executive and to the Committee on Rights and Privileges a brief statement of its position on civil service which included opposition to preference to veterans in civil service. In view of several proposals for preference presented since that time by representatives of veterans' organizations we would like to state our position more fully.

We are not indifferent to the needs of veterans for good jobs and housing, as well as health and other services. Our legislative program includes items which we believe would benefit all citizens, including veterans who have suffered loss of opportunity for personal economic advancement because of their war service, or who are handicapped physically. These include extending adult and out-of-school educational facilities; broadening the coverage and increasing the benefits of unemployment and workmen's compensation, and sickness insurance; slum clearance and publicly subsidized housing for low income groups; cooperation of government with agriculture, labor and industry to achieve full and continuing employment and an increasingly higher standard of living.

The League, however, believes that what is bad for citizens as a whole is also bad for veterans. As one veterans' representative pointed out at a hearing before the Committee on Rights and Privileges, the number of veterans in New Jersey is now about 700,000, an enormous increase compared to the number existing when preference was first considered. He remarked that they, with their wives and dependents, are a very large part of the population—in fact, that they are “the people.” Because this is precisely the view of the League we cannot endorse his proposal that the Constitution provide for giving preference in civil service lists to “veterans, widows of ex-service men and wives of permanently disabled veterans irrespective of marks made by non-veterans in examinations.”

Veterans, with their families, own homes, pay taxes and use government services. Therefore anything which weakens our government at any level and makes it wasteful or inefficient is bad for citizens as a whole, of which the veterans comprise a very large part. Although a few veterans would benefit personally by lowered civil service qualifications, the vast majority would suffer the effects of high taxes and poor services resulting in any breakdown in high requirements for government personnel. We are sure that many veterans will qualify for civil service positions without a preference which lowers these standards.

The League of Women Voters is therefore strongly opposed to any constitutional provision which would "require the Legislature to give civil service or any other preference to disabled veterans" (*Star-Ledger*, July 10, p. 2), or any other group or class of citizens. In this we agree with the statement of Mr. Edwin K. Large, a veteran, before the Committee on Rights and Privileges (*Newark Evening News*, July 10). If a compromise is essential the proposal of Charles F. Sullivan, speaking for Amvets (*Newark Evening News*, July 10), that the Constitution vest the Legislature with "general authority to enact such laws as may be desirable for the welfare of veterans," might be less damaging than a provision "requiring" such legislation.

It is the hope of the League of Women Voters that the new Constitution will make possible a government and society which will promote the greatest possible good for all citizens. This will be possible only if the government is operated on a high level of administration.

Very truly yours,

RACHEL C. HEINZ

MRS. W. B. HEINZ, *Chairman,*
Government Operation

PROPOSALS BY THE LORD'S DAY ALLIANCE OF THE UNITED STATES

We submit the following proposals for your consideration and earnestly hope that you will recommend them for favorable action to the Constitutional Convention:

I. That the provision in the present Constitution of the State of New Jersey, Article V, paragraph 7, relating to rights and duties of the Governor, in which he is given five days (Sundays excepted) to consider bills, either to sign them into law or veto them, be retained in the proposed revision of the Constitution. This provision is patterned after Article I, Section VII, paragraph 2, of the Constitution of the United States in which the President is given ten days (Sundays excepted) for acts of similar duty.

It should also be well understood that the provision in the Constitution of the United States and that in the Constitution of the State of New Jersey above referred to relating to the President and the Governor, respectively, as respects Sunday, is impliedly for the people.

II. That as the State Government is under obligation to protect, defend and preserve this civil institution of Sunday, we request your Committee to make a recommendation to the Constitutional Convention for the safeguarding of the day and the strengthening of the restraints against possible invasions of Sunday by predatory powers and commercial and unseemly enterprises.

In submitting these proposals, I wish on behalf of the Board of Managers of the Lord's Day Alliance of the United States, to express their appreciation of the courtesy extended to me when I appeared before your Committee on the morning of July 9 at which time I gave you somewhat extended reasons for the proposals made herewith, and that the Board of Managers at its semi-annual meeting of June 19, had unanimously adopted a resolution to overture you respecting the same. We brought to your attention the fact that this Alliance is the official agency of a score of evangelical denominational Christian bodies representing throughout the United States full 20,000,000 communicant church members, with additional adherents numbering approximately 10,000,000, included in which is no small number in the State of New Jersey. We directed your attention to the fact that as both the National Constitution and our State Constitution—I am a native of New Jersey and a resident of East Orange—have incorporated Sunday within them, both our Nation and the State are under bounden obligation to maintain the integrity of the civil institution of Sunday and to protect it against the assaults of a brazen commercialism and the interference

of those things which rob men of their rights to the weekly rest day through business which operates unnecessarily on that day, the motive of which operation is the extra profit that can be made by so doing.

It is also an important fact, as well as interesting, that the United States Supreme Court in an opinion handed down on February 29, 1892, in the case of *Holy Trinity Church v United States*, that Mr. Justice Brewer who wrote the opinion in that case won by Holy Trinity Church, declared that the United States "is a Christian nation." In the decision of the court he traced the early beginnings of our country from Colonial days and called attention to the fact that our Congress is closed on Sundays; our state legislative bodies and our courts are closed on that day, and business generally likewise. And Justice Brewer emphasized that it was the day of churches carrying on their benevolent service, concluding with the thought that such unofficial utterances along with official declarations led to the conclusion that "this is a Christian nation."

I was pleased to mention the fact that one of our greatest Presidents, Woodrow Wilson, son of a Presbyterian minister, while President of Princeton University when an agitation was on for the discontinuance of compulsory chapel service, stated—I have the original statement in his handwriting—that compulsory chapel services would not be discontinued as they were beneficial to the students and that they added flavor to the day's appointments. We maintain that Sunday adds flavor to the weekly rest day of the sons and daughters of toil; that this day, which is the Christian Sabbath, is a day of spiritual flavor for those who would worship in their churches and find a sweet communion and fellowship in the family circle in their homes. By any stretch of the imagination one can scarcely count the blessings and benefits that come from the "day of all the week the best, emblem of eternal rest."

New Jersey, Garden State, is a little state, but in the paraphrase of the words of Daniel Webster who said of Dartmouth College in its early days, "It is a little college, but there are those of us who love her," so shall we say of our little State: New Jersey is a little state, but there are those of us who love her. Revise her Constitution as we may, but upward, not downward. Keep well intact the provisions that have proved her prowess and power. Let no hand remove the pillar of strength, Sunday. Buttress it on every side with provisions that in this day when so many youth must be won back from juvenile misdoings to a more proper appreciation of what is right, and acting upon principles that make, not mar life, they shall become the body social and spiritual to enrich the body politic, and so usher in the better day. Members of your Committee, we trust

your ability to comprehend the situation; we feel confident of your action on this important matter and the conclusions you will reach.

Sincerely yours,

For the Board of Managers,

HARRY L. BOWLBY, *Secretary*

LETTER OF DOUGLAS H. MACNEIL, Esq.

STATE OF NEW JERSEY
DEPARTMENT OF INSTITUTIONS AND AGENCIES
Trenton 7

July 9, 1947

Mr. John F. Schenk, Chairman,
Committee on Rights, Privileges,
Amendments and Miscellaneous Provisions,
Constitutional Convention of the State of New Jersey,
New Brunswick, New Jersey.

Dear Mr. Schenk:

I appreciate very much the honor of being invited to appear before your Committee of the Constitutional Convention.

This letter will serve as a substitute for a personal appearance, in accordance with your alternate suggestion.

Relationship Between Juvenile Delinquency and Voting Age

If I understand the reasons for coupling these two topics, the line of argument is somewhat as follows. Under the juvenile court and related legislation, the State assumes that a person under the age of 18 years has not reached full maturity. Therefore, we deal with youth under the age of 18 years who violate the law through an equity-type of judicial process rather than through prosecutions under the criminal law. On the attainment of age 18, however, the child is assumed to be sufficiently responsible for his actions to stand trial in a criminal court. Therefore, it may be suggested that, if he is sufficiently mature at 18 to be subjected to criminal prosecutions if he violates the law, he is mature enough to vote if he lives within the law.

Personally, I do not see that there is a true syllogism here. It would have been equally logical a few years ago when the jurisdiction of the juvenile court ceased at age 16 to argue that the voting age should be lowered to age 16. This, I am sure, would not be seriously considered by your Committee.

Just as the upper age of compulsory school attendance or the age of eligibility to drive a motor vehicle may be fixed well below the voting age, so logically can the age of juvenile court jurisdiction be established by legislation below the age of majority.

In my judgment, there are no binding social, economic, or legal reasons why the age of voting and the juvenile court maximum age should be identical.

In relation to juvenile delinquency, there are administrative and perhaps constitutional considerations which make it desirable to

have a lapse of time between the termination of childhood and the assumption of full adult obligations and privileges. Through the three-year period between the age of 18 years below which courts are empowered to deal with children as delinquents, and the attainment of majority, treatment agencies (institutions and probation) now have the time to do things "for" minors under an equity-type of procedure which they could not legally do if the upper age of juvenile court jurisdiction should be made identical with the voting age.

I, therefore, would not recommend, from the point of view of one concerned with juvenile delinquency problems, the lowering of the voting age to 18 years.

General Considerations on the Age of Eligibility to Vote

On broad grounds as well as the narrower administrative reasons relating to juvenile delinquency, I feel that it would be inadvisable to fix the voting age at 18 years in a new Constitution. There are many sound reasons why, as at present, there should be a probationary period between the termination of childhood and the attainment of majority.

I do not wish to enter into the discussion of changing the voting age on the theory that compulsory military service at age 18 justifies voting at age 18. There is, however, one point which I have seldom seen in any of the public expressions on this subject. Under the common law concept of "militia" every male between the ages of 18 and 44 years, inclusive, is subject to "militia" service in defense of the state. In the early days of the Republic, annual or more frequent "muster days" were held at which the entire male population of militia age was required to report for compulsory training. The founders of the Republic saw no inconsistency between this form of compulsory military service at age 18 and delaying the age of majority to 21 years. This, of course, does not constitute any conclusive argument against lowering the age of voting to 18 years but it does constitute proof that 18 years has always been the age at which Americans may be called upon for military duty.

During recent years I have been very much interested in the reaction of young people to the proposal that the voting age be lowered to age 18. The Model Legislature, sponsored by the Y. M. C. A., has considered the question annually and has rejected it each year largely on the grounds expressed in the first paragraph of this section. The same agency, with the advice and guidance of Dr. George Gallup, has canvassed public opinion both among youth under the age of 21 years and among adults. The results of the canvass made in the spring of 1947, are as follows:

	<i>Opinion Among Persons</i>	
	<i>Under Age 21</i>	<i>Age 21 and Over</i>
Favor lowering voting age	41%	39%
Oppose lowering voting age	57%	57%
No opinion	2%	4%

It is impossible for me to evaluate the accuracy of this canvass but it does suggest the probability that substantial majorities of both youth and adults are opposed to any change in the present voting age.

On the other hand, 40% of the public appears to favor reducing the voting age below 21 years. This is a strong minority sentiment in favor of such a change which may develop into a majority opinion, in the next few years. Perhaps, therefore, your Committee may wish at least to consider the advisability of phrasing the franchise clause of the proposed new Constitution so as to permit the fixing of the voting age by legislation within the possible minimum of 18 years and the maximum of 21 years.

If you have any further questions or if any amplification of this statement is desired by you, please consider my services at your disposal.

Very truly yours,

DOUGLAS H. MACNEIL, *Director*
 Division of Community Services
 for Delinquency Prevention

PROPOSALS OF THE NEW JERSEY
STATE CONFERENCE OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE

PROPOSAL NO. 1

Article I—Rights and Privileges:

Add a provision after Section 1 as follows:

“Section 3 (Equal protection of laws; discrimination in civil rights prohibited). No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the State or any agency or subdivision of the State.”

PROPOSAL NO. 2

Article I—Rights and Privileges:

Add a provision after Section 1 as follows:

“No person shall be excluded, because of race, creed, color, or national origin, from any school, institution, agency, accommodation, or facility, supported in whole or in part by public funds or by contributions solicited from the general public or granted tax exemption by the State or any governmental subdivision thereof.”

PROPOSAL NO. 3

Article I—Rights and Privileges:

Add a provision as follows:

“No restriction shall be placed upon the ownership, leasing, use or occupancy of land based upon race, creed, color, or national origin.”

PROPOSAL NO. 4

Article I—Rights and Privileges:

Add a provision after Section 7 as follows:

“No property qualification shall be fixed for service upon grand or petit juries.”

MEMORANDUM OF THE
NATIONAL CONFERENCE OF CHRISTIANS
AND JEWS, NEW JERSEY REGION

AMERICAN BROTHERHOOD
THE NATIONAL CONFERENCE OF CHRISTIANS AND JEWS
Founded in 1928
790 Broad St., Newark 2, N. J.

July 2, 1947

MEMORANDUM

To: Committee on Rights and Privileges

From: National Conference of Christians and Jews—New Jersey
Region

As an educational organization concerned with promoting amity, justice, understanding and cooperation among the diverse people of our State and Nation, the National Conference believes that the constitutional guarantee of the civil rights of the individual is the basic cornerstone upon which democratic human relations must be built in a free society.

Therefore, on behalf of the National Conference of Christians and Jews, New Jersey Region, I am delegated to submit to the Committee on Rights and Privileges of the Constitutional Convention, the recommendation that the duly authorized delegates to the Constitutional Convention write into the Bill of Rights section of the State Constitution, a section guaranteeing full enjoyment of civil liberties to all persons regardless of race, color, religion or national origin. Specifically, the National Conference of Christians and Jews respectfully offers the following plank and urges the adoption of it or one of similar substance:

“No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, religion or national origin, be subjected to any discrimination in his civil rights by any other person, or by any firm, corporation or institution, or by this State or any agency or subdivision of the State.”

Respectfully submitted,

LOUISE HARTSHORNE, *Associate Director*

PROPOSALS OF
NEW JERSEY AMERICAN YOUTH
FOR DEMOCRACY

The New Jersey American Youth for Democracy wishes to make known to the Convention its support for the attached amendments proposed by the Joint Committee on Constitutional Bill of Rights.¹

We would like to see the addition of two phrases to the proposed amendments:

ARTICLE I

Sec. 4. The last clause shall read:

“because of his race, color, religion, national origin, or political belief.”

Sec. 19a. Shall read:

“The right of workers to organize, bargain collectively, and strike shall not be impaired.”

Amend Article II, paragraph 1, of the Constitution of the State of New Jersey, so that it shall read as follows:²

“Every citizen of the United States, of the age of *eighteen* years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; provided, that no person in the military, naval or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector. And provided further, that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.”

502 High Street,
Newark, N. J.

¹ The amendments appear on page 355.

² Underlined [italicized] matter, new. The words “pauper” and “male” are deleted.

PROPOSALS OF
THE NEW JERSEY COMMITTEE
FOR CONSTITUTIONAL REVISION

(Excerpts from the Committee's pamphlet, "Constitutional Changes
Recommended by the New Jersey Committee for Constitutional
Revision")

* * * *

IV. PUBLIC OFFICERS AND EMPLOYEES.

- A. Write the merit system into the Constitution.
- B. Prohibit legislators and Governors from receiving any state appointments during their term. Also prohibit their appointment to positions created during their terms and for one year thereafter.
- C. Omit mention of county officers in the Constitution.
- D. (Suffrage Article) Omit the words "male" and "pauper" as qualifications affecting the right to vote. Change wording which might be interpreted to prevent the use of proportional representation if desired in the future.

V. PROVISIONS FOR FUTURE CHANGE.

- A. By *Amendment*—A simpler and less cumbersome provision for future amendment, same to be submitted to the voters at any *general* election and not at a *special* election.
- B. By *Revision*—The question of authorizing revision *shall* be submitted to the people at a general election.
 - (1) In any year designated by law, *or*
 - (2) Automatically, 20 years after the last such referendum submission.

DRAFT PROPOSALS AND STATEMENT OF
COMMITTEE ON RESEARCH AND DRAFTING
OF THE NEW JERSEY COMMITTEE FOR
CONSTITUTIONAL REVISION

GENERAL ARTICLE
(Self-Executing Clause)

The provisions of this Constitution shall be self-executing, to the fullest extent that their respective natures permit. The Legislature, the Governor and the Judicial Department shall each have power to take any action consistent with its nature in furtherance of the purposes of this Constitution and to facilitate its operation. Whenever legislation may be needed to carry out a mandate of the Constitution, the Governor shall call it to the attention of the Legislature, and he may issue an executive order to carry out the mandate. Every such executive order shall be transmitted to each house of the Legislature while it is in session and shall become effective as law 60 days after its transmittal unless it shall have been modified or replaced by act of the Legislature.

CONSTITUTIONAL CONVENTION CLAUSE

Without limiting the inherent right of the people at all times to revise their Constitution in a manner of their own choosing but in order to provide a convenient method for the exercise of that right, the Legislature may submit to the people at any time the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" and if the Legislature does not submit the question at any time during a period of 20 years, the state officer whose duty it is to certify state-wide public questions for submission to the people is hereby directed to certify the question, to be voted on at the first general election held more than 20 years after the last such vote by the people.

The convention, if authorized by a majority of the qualified electors voting on the question, shall be composed of as many delegates from each county as there are members from that county in the House of Assembly, elected, unless otherwise provided by law, at the next general election in accordance with the provision of law applicable to the election of members of the House of Assembly. The Legislature may provide, in addition, for not more than nine delegates to be elected at large. It may provide also that the election of delegates be held simultaneously with the vote on the question of revision.

Unless otherwise provided by law, any qualified voter of the State shall be eligible to membership in the convention and the convention may provide for vacancies due to death, resignation or other cause.

The delegates shall convene at the seat of government at noon of the second Tuesday following their election. The convention shall determine its own organization and rules of procedure.

Any proposed Constitution or constitutional amendment approved by a majority of all the delegates shall be published and submitted to a vote of the electors of the State at such time and in such manner as may be provided by the convention. All proposals approved by a majority of the qualified voters voting thereon shall become effective 30 days after the election, unless otherwise provided by the convention.

The provisions of this section shall be self-executing, but the Legislature shall appropriate money and may enact legislation to facilitate their operation.

STATEMENT ON PROPOSED CONSTITUTIONAL CONVENTION CLAUSE

Objectives

"The basis of our political systems is the right of the people to make and to alter their constitutions of government." This statement by George Washington is regarded by most Americans as axiomatic. The same axiom is expressed in paragraph 2 of the Bill of Rights of the New Jersey Constitution which says that "All political power is inherent in the people" and that "they have the right at all times to alter or reform" the government "whenever the public good may require it."

Unfortunately, such political principles frequently mean little in the absence of specific machinery through which they can operate. The long history of thwarted attempts by the people of New Jersey to obtain a constitutional convention illustrates the point.

Thirty-six states make specific provision for the calling of a constitutional convention, but in most of these the calling of a convention requires a form of legislative action which has the effect of limiting rather than facilitating the exercise of the right of the people. This is especially true in the 19 states which require an extraordinary vote in the legislature, followed by a referendum, to call a convention. Such impediments to the exercise of the people's right to alter or reform their government seriously impair the sound functioning of the American system. For many years evidence has been piling up that the failure of many states to keep their constitutions abreast of the times has been undermining our federal system by weakening state and local government and forcing the people to look more and more to the central government for important services and protections. Recent New Jersey Governors have stressed this point in urg-

ing constitutional revision. (See also article entitled "The World Demands Proof," by Spencer Miller, Jr., in the *National Municipal Review*, March 1947)

Consequently some provision which would insure the people adequate access to their Constitution has for several years been the number one objective of many of the civic organizations working for a new Constitution through the New Jersey Committee for Constitutional Revision. Failure to meet this demand in the proposed 1944 revision was an important reason for the failure of that document to gain more widespread support.

In recent years the most widely hailed method for giving the people an opportunity to review it is a provision to insure them the opportunity at reasonable intervals to vote on whether or not they wish to hold a representative constitutional convention. Such a provision was written into the 1941 revision of the "Model State Constitution." The following eight state constitutions have provisions intended to require the submission of the question to the voters at periodic intervals: New Hampshire, every 7 years; Iowa, every 10 years; Michigan, every 16 years; Maryland, Missouri, New York, Ohio and Oklahoma, every 20 years.

Unfortunately the provision in most cases is not clearly self-executing. In other words, although mandatory in form, the provision is not carried out unless the legislature provides the necessary machinery. The provision of the New York constitution is self-executing, has been carried out regularly and is believed to be partly responsible for the reputation of the New York constitution as one of the most up-to-date and satisfactory state constitutions. On the other hand, the provision in the Oklahoma constitution, which should have resulted in a vote by the people on the calling of a constitutional convention this year (1947), is not self-executing. The 1947 Oklahoma legislature passed a bill to hold a special constitutional convention election in November but this bill was vetoed by the governor and failed to secure the necessary two-thirds vote for re-passage. The new 1945 Missouri constitution was prepared by a constitutional convention called as the result of a provision requiring submission of the revision question every 20 years. That provision was not sufficiently explicit to be clearly self-executing and the secretary of state did not decide to submit the question until he had been subjected to considerable public pressure. As a result of this experience the new Missouri constitution includes a provision which clearly imposes an enforceable mandate on the secretary of state.

For these reasons it is considered important that any revision clause in the New Jersey Constitution should be self-executing. The accompanying proposal was prepared primarily with that in mind. It is believed that this provision meets this test fully. At the same

time it would be the shortest, clearly self-executing provision in any state constitution. It is confined to matters of fundamental importance. It fully recognizes and protects the inherent and democratic right of the people to revise their Constitution at any time and in any way they see fit. Finally, it is flexible in that it leaves the way open to the people and the Legislature, in the light of experience and the requirements of the future, to employ what may then seem to be the best method of procedure.

The difficulty of getting timely revision of our present Constitution has made provision for a workable method of future revision the most important *single* objective of the civic groups working for a new Constitution. We do not claim to have all political wisdom today—as we know our forefathers did not. Nothing would do more to pave the way for general popular approval of the new Constitution than a revision procedure that will make for confidence that whenever experience may indicate the need for it, a convenient method of revision will be readily available.

Explanation

Without any action by the Legislature this Article would require the Secretary of State or other appropriate officer to submit the revision question to the people 20 years after its last submission. If the people vote “yes,” 60 delegates would be elected at the next general election in the same manner as the members of the General Assembly. The convention would meet two weeks later and would have full power to organize, carry on its business and submit its proposals to the people in such form as it sees fit at a regular or special election.

If the Legislature wishes, it may provide for not more than nine additional delegates at large; it may provide that the election of delegates shall be held at the same time as the vote on the revision question, thus saving one year; and as long as it does not disturb the number or apportionment of county representation, it may provide a different method of electing delegates from that established by law for the Legislature. For example, the Legislature might provide for non-partisan election of delegates in place of nomination at party primaries and election under party labels.

The Article also reserves the right of the Legislature to submit the revision question at any time that it sees fit, and the first clause of the Article reserves the right of the people or of the Legislature subject to the approval of the people to provide some other method for proposing changes in the Constitution.

The draft leaves the Legislature free to provide for submission of the original question and/or the election of delegates at other than general elections. It also leaves the convention free to submit its proposals either at a general or at a special election. This was done

despite the widespread assumption that all public questions should be submitted at general elections. Requiring that all such matters be submitted only at general elections might unnecessarily prolong a constitutional revision project. This could be particularly unfortunate in an emergency. If the decision to submit the preliminary question and the election of delegates together at the primary election this year was a wise one, it would seem most unwise to forbid a similar time-saving procedure to future generations. It is believed that Legislatures and conventions will ordinarily be reluctant to make use of any but established state-wide elections for purposes of constitutional revision, but we see serious danger in absolutely prohibiting a special election, especially since a special election can be held in conjunction with a primary election or with municipal elections.

The draft makes the convention entirely responsible for its own organization, procedure and time schedule but directs the Legislature to make necessary appropriations and authorizes the enactment of other legislation in aid of the work of the convention.

The principal sources of the draft are the proposal by the New Jersey Committee for Constitutional Revision in 1944, the "Model State Constitution" and the New York and Missouri constitutions.

We have stated that the proposed draft includes only matters of basic importance. This does not mean that a workable, self-executing provision must necessarily include everything incorporated in this draft. For example, a perfectly workable provision would not need to include the first clause re-stating the right of the people already affirmed in the Bill of Rights. It would not need to authorize the Legislature to provide for delegates at large or for simultaneous votes on the question and election of delegates. The provisions concerning qualifications of members, the organization and rules of the convention and filling of vacancies of the convention are not absolutely necessary. Neither is the provision concerning the effective date of constitutional proposals approved by the people or the final paragraph concerning the right of the Legislature to facilitate the operation of the section.

Nevertheless, it is believed that these sections are worth retaining. In some cases they provide for greater flexibility in procedure and choice of methods than would otherwise be available. In general, they give a more comprehensive and understandable picture of the whole revision process and thus will tend to reduce future controversy over the extent and limits of the discretion of the people, the Legislature and the convention, without restricting the scope of sound discretion. It must be remembered that a Constitution is written both for lawyers and for the people in general, primarily for the latter. The less a Constitution leaves to the imagination without

becoming unduly prolix or restrictive, the more understandable it will be to the people and the less leeway there will be for legal controversy.

AMENDMENT CLAUSE

Any amendment to the Constitution may be proposed in the Senate or General Assembly. Prior to a vote in the house in which such amendment is first introduced, the proposed amendment shall be printed and on the desks of the members at least 20 calendar days, and a public hearing shall be held. If the amendment then is adopted by a majority of the members of each house, in accordance with the procedure for the adoption of bills, the proposed amendment shall be presented to the Governor. If the Governor approves the amendment or if he fails to take any action on it within 15 days, the amendment shall not be submitted to the people unless the Legislature shall re-pass it by a three-fifths vote of all the members of each of the houses.

Each proposed amendment shall be submitted to the people at the next general election held at least 30 days after the passage of such amendment, in such manner as the Legislature shall prescribe.

If at the election the people shall approve an amendment by a majority of the legally qualified voters of this State voting thereon, such amendment shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment.

RIGHT OF SUFFRAGE CLAUSE

Every duly registered citizen of the age of 21 years or more who shall have been a resident of this State one year shall have equal voting rights in all elections by the people in the election district of which he is a resident, provided, that no idiot or insane person shall enjoy the right of an elector and that persons may be deprived by law of the right of suffrage because of conviction of crime.

No person shall, for the purpose of suffrage, be deemed to have become a resident of, not to have abandoned prior residence in, this State by reason of his presence therein or absence therefrom during active service in any branch of the military or naval forces of this State or the United States.

No elector in active service in any branch of the military or naval forces of this State or of the United States shall be deprived of his vote by reason of his absence from his election district.

The manner in which and the time and place at which ballots may be cast by electors absent during active service in any branch of the military or naval forces of this State or of the United States, and

the manner of the return and canvass of such absentee votes, shall, at all times, be provided by law.

COLLECTIVE BARGAINING PROVISION

Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.

PROVISION ON THE RIGHT TO NOMINATE CANDIDATES

The right of any legally qualified group of petitioners or of the voting members of any legally recognized political party to nominate any qualified person for an elective public office shall not be denied or abridged because he is not a member of the party or on account of his nomination by some other party or group.

—JOHN E. BEBOUT, *Chairman*, Research
and Drafting Committee, New Jersey
Committee for Constitutional Revision

July 3, 1947

PROPOSALS OF THE NEW JERSEY COUNCIL OF CHURCHES

850 Broad Street
Newark 2, N. J.

June 30, 1947

At its regular meeting on June 16th, the Executive Committee of the New Jersey Council of Churches endorsed the changes recommended by the New Jersey Committee for Constitutional Revision. A statement of these suggested changes is appended to this letter.¹ We feel that these are the very minimum changes needed to make our Constitution adequate for our highly industrialized State and to provide for that clear and distinct separation of powers as between the Executive, Legislative and Judicial Branches of the Government so fundamental in our American democracy.

The fundamental changes needed in our State Constitution are these:

1. Giving to the Governor effective power over the executive functions and personnel of the government.
2. Enhancing the Legislative Branch, increasing its efficiency and clarifying its powers and responsibilities.
3. Providing for a coordinated and unified court system.
4. Providing for an effective means of amending and revising the Constitution itself.

The proposals set forth by the New Jersey Committee for Constitutional Revision lay down the essentials for such changes and therefore we endorse these proposals.

In addition, we propose the following two additions to the Bill of Rights. The first of these is that submitted by the New Jersey League of Women Voters; the second is similar to a suggested change in the New York State Constitution. Both of these additions have a fundamental place in a constitution in a democracy.

1. Citizens shall have the right to organize, except in military or semi-military organizations not under the supervision of the State, and except for purposes of resisting the duly constituted authority of this State or of the United States. Employees shall have the right to bargain collectively through representatives of their own choosing.
2. No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall because of race, color, creed, or national origin be subjected to any discrimination in his civil rights by any other person or by

¹ The changes so proposed appear in the Appendices to the respective Committee Proceedings.

any firm, corporation or institution or by this State or any agency or subdivision of this State.

Furthermore, we sincerely urge that the present amended amendment in our State Constitution regarding gambling be eliminated from the new Constitution and that there be no Article in the Constitution either prohibiting it or permitting it. The churches of this State have in no way retreated from their strong opposition to gambling in all forms and their insistence that the laws regarding it be strictly enforced. Furthermore, we believe that gambling is not only morally wrong but that it presents grave social and economic hazards to our community that this State should take cognizance of and provide effective remedies for by legislative means. However, we do not believe that the regulation and control of any specific evil such as gambling belongs in a Constitution which establishes basic principles and sets up the fundamental machinery of government. It is primarily a legislative and police function and it is into the hands of these agencies that adequate regulation and control must be placed.

Very sincerely yours,

HENRY REED BROWN,
General Secretary,
New Jersey Council of Churches

BRIEF OF THE NEW JERSEY COUNCIL, STATE COUNTY & MUNICIPAL WORKERS

(Not connected with C.I.O.)

*In Support of Proposals for Constitutional Provisions Guaranteeing
to Public Employees Certain Fundamental
Rights and Liberties*

Labor relations between employer and employee in private industry has enjoyed a long and continuing history of improvement through legal control, definitions and establishment of media for mediation, conciliation and arbitration.

Labor relations between the public employee and his politically established "employer" has lagged distressingly behind. New Jersey has had a particularly confusing policy which constitutes a lack of policy regarding this vital question. In 1942 Governor Edison appointed a special committee, headed by Chief Justice Harry Heher, to make a study of the problem which was brought to general public attention at that time because of the obstacles placed in the way of employees at Trenton State Hospital when they tried, through the agency of their union, to obtain redress of grievances.

Hearings were held and findings made which did not go far enough to solve the problems and which were never transmitted to law in such a way as to bring the public employee in New Jersey up from a "Grade B Citizenship" status. Suffice it to say that at Trenton State Hospital there are grievances still existing which were presented at that time and have yet to be settled.

Subsequently, an opinion was written by Attorney-General David T. Wilentz which confounded a situation already confused. He stated, in effect, that, in the absence of specific permissive legislation, the State and its subdivisions are prohibited from negotiating with a labor union. Of this opinion the *New Jersey Law Journal* of January 27, 1944 had the following to say:

"* * * This opinion is open to serious doubt. * * * That the Attorney-General was wrong in looking for permissive legislation, rather than for prohibitory legislation, appears from the opinion of the court in *Matter of Hagan v Picard*, 171 N. Y. Misc. 475, aff'd. 258 App. Div. 771, where the New York court held that an association of employees of the New York City Park Department was entitled to approval of its certificate of incorporation, stating, 'I find nothing in the statute which renders unlawful the organization of public employees for their mutual welfare and benefit. They have the same right to mutual help and assistance that other citizens have—and to group themselves together for that purpose. Concededly the unincorporated form of organization of public employees is not unlawful. If it were, the units now in existence would be disbanded by public authorities and their members prosecuted.' * * * The opinion of Mr. Wilentz reflects the position of the Court of Chancery of ten or fifteen years ago, which refused to recognize the rights of labor organization,

collective bargaining and peaceful picketing. Much water has passed under the bridge since those days. Now an attempt is being made to apply those outworn concepts from early injunction cases to government employees. In the absence of prohibitory legislation these attempts are without sound legal foundation and should fall."

Subsequent to the issuance of the Wilentz opinion there have been, to the intimate knowledge of this organization (State, County and Municipal Workers) at least three situations developing which reached serious proportions in relation to interruption of vital public services. They are listed below, with a brief history of each:

1. City of Trenton Strike—January 1946: (See attached, "A Brief Submitted by New Jersey Council for Local 504, State, County and Municipal Workers, CIO—for Arbitration with Trenton City Commission, December 3, 1945").¹ In this case the principal issue was adamant refusal by the city commissioners to negotiate or even discuss the matter. The copy of the letter from Dr. William S. Carpenter to Mayor Andrew J. Duch, attached to the rear cover of the aforementioned brief, testifies amply to the truth of that statement. It is significant that in this case Mayor Duch hid behind the Wilentz opinion which, as the *New Jersey Law Journal* stated, "is open to serious doubt." Even the impelling advice of the President of the Civil Service Commission, setting forth as it did an implied authorization from the Governor of the State of New Jersey, did not carry enough weight to move one stubborn individual who was denying any form of job democracy to the employees of the city. This denial by the Trenton City Commission constituted a legalized and discriminatory denial of fundamental rights enjoyed by other workers.

2. Trenton State Hospital Crisis over Eight-Hour-Day Issue: On March 11, 1947, a telegram was sent to Governor Alfred E. Driscoll by the State County & Municipal Workers, warning that many attendants employed at Trenton State Hospital would quit their jobs, *en masse*, unless the management of the hospital were willing to sit down with them and their representatives for a reasonable discussion of ways and means to put into operation a long-promised eight-hour day. A voluminous file of correspondence, a long background of meetings with lower levels of management (all of whom were admittedly powerless to act), and a preponderance of evasions had exhausted the patience of these employees to the point where this threat was a mere expression of existing fact. Here again, the only argument advanced by the Board of Managers and the Commissioner of the Department against meeting with the union for a friendly and peaceful settlement of the issues was the Wilentz opinion. Here again, also, was a denial of this group of employees of a fundamental right enjoyed by other workers in the State.

It is to be said to the credit of Governor Driscoll and Commis-

¹ The brief is not reproduced.

sioner Sanford Bates, of the Department of Institutions and Agencies, that the cause for this grievance was quickly removed by establishing an eight-hour day. However, as we have pointed out to both the Governor and the Commissioner in subsequent correspondence, the same results could and should have been obtained by cooperative and friendly methods, extending to the employees of the State the right to be heard, collectively if they so desire.

3. Passaic Valley Water Commission Case: Here is a case which has been brought directly to the attention of Governor Driscoll, in which he has expressed concern but over which he is forced to say he has no jurisdiction. A serious strike, affecting, as it would have, the health and well-being of the citizens, was averted only because this union insisted that the workers stay on the job, awaiting peaceful settlement of the issues. The Passaic Valley Water Commission, consisting of four politicians, two appointed by the mayor of Paterson, one by the mayor of Clifton and one by a commissioner of the City of Passaic, operates in a "twilight zone," immune from any control by the State which legalized its existence, completely in the hands of the politicians of the area, extending no civil service or other job security to its employees, and practicing absolutism in the midst of our democracy. The merits of this case, involving the arbitrary lay-off, without any stated reason or hearing, of three employees, actually for union activity, are valid enough that the American Civil Liberties Union has agreed to fight the case for these three workers on the grounds that they have been denied the fundamental constitutional right of freedom of speech. The details of this case would too greatly burden any document that goes under the title of a "brief." However, we will be only too happy to bring before any committee interested in further documentation, all of these details. Suffice it to say that here again, a denial of fundamental rights enjoyed by the average American worker is allowed against a group of public employees—albeit the denials have been much more flagrant and crude in this particular instance.

* * *

The above instances are outstanding and involve, as we have stated, extreme cases in which a serious threat to the health and well-being of the community has been brought about by this denial of a fundamental right enjoyed today by all workers, other than those in the public service. Innumerable day-to-day occurrences can be related, demonstrating how those politicians who are outstandingly lacking in concepts of democracy and, in many cases, outstandingly lacking in basic honesty, take advantage of the failure on the part of the State of New Jersey to give to the public employees a fundamental democratic right, as enjoyed by employees in private

industry, to form associations of their own choosing for the purpose of collective negotiations and orderly settlement of grievances.

On the other side of the ledger, we can point to one public administrator in New Jersey, however, who, having a background of authentic knowledge and experience in the field of employer-employee relations and who, being intellectually honest, applies those reasonable concepts to his administrative job in the State of New Jersey. This administrator has met with his employees and their chosen representatives, with a resultant boost to employee morale to the point where the State of New Jersey is the direct benefactor. We refer to Commissioner Spencer Miller, Jr., of the New Jersey State Highway Department. Here there has never been the slightest inkling of a threat of work stoppage or slow-down. Here, too, this union has indicated a willingness to accept voluntarily a binding no-strike pledge. The point we make here is that the question of strikes in the public employment, being a negative question as related to employer-employee relations, is automatically eliminated by taking a positive approach to those relations.

With special emphasis, we call to the attention of the delegates to the New Jersey Constitution Revision Convention the attached pamphlet, "Employee Organizations and the Government Service," published by the National Civil Service League.¹ This report constitutes as authentic and impressive a compendium of weighty opinion on the subject matter at issue as can be found. An examination into the background and position of those who have compiled and approved this report must convince any reasonable person that here, indeed, is a digest of opinion, up-to-date, middle-of-the-road and offering a reasonable solution to the problems. This union has said repeatedly and here reiterates, that we are willing to accept, in its entirety, the recommendations of this report as a basic "yardstick" for the establishment of reasonable employer-employee relations in the State of New Jersey. It will be noted that one point made repeatedly in this report and accepted by these experts without qualification, is that public employees must be allowed to speak either individually or collectively through the agency of any employee organization with which they choose, voluntarily, to associate themselves.

The following quotations are here set down for emphasis:

"The present report * * * is the result of the thinking of a group of citizens of varying responsibilities who have the interest of the community at heart and who are sympathetic both to the rank and file in the civil service and to the officials who supervise them. It seeks to emphasize what the good of the public service requires with respect to the relations of government with employee organizations." (Page 6)

"The common feeling of the country, as well as its national policy, has established clearly the right of employees to decide for themselves whether

¹ The pamphlet is not reproduced.

or not they will form an association to discuss their problems and to elect representatives of their own choosing, whether public employees or not, through whom to submit their requests." (Pages 8 and 9)

"* * * while normally a public agency may negotiate to the point of reaching an agreement with the group involved, the terms are to be embodied not in a binding joint contract but in a memorandum, freely accepted, setting forth policies and programs the administrator alone can carry forward. It is collective negotiation." (Page 14)

"An administrator should profit fully from the guidance he may obtain from collective consultation with his employees or their representatives with respect to conditions of employment and the good of the service. An informal negotiation, understanding, or 'contract' can thus result, and this cooperative arrangement may be kept in good faith without its being binding on the legislature or the administration." (Page 16)

"Organizations of government employees, recognized and received in conferences by management, and speaking through representatives of the employees' own choosing, have already contributed much to cooperative development of labor and management policies and to the creation of machinery to prevent or alleviate grievances." (Page 20)

"The relations of government units with employee associations involve some of the most difficult and delicate problems of democracy. The development of appropriate and effective procedures requires from all the parties concerned an open-minded, experimental and forward-looking attitude.

The administrator on his part, must recognize his paramount obligation of democratic leadership of his unit and at the same time his responsibility to the public at large. Associations of employees must likewise integrate their desires for better conditions for their members with the interests of public administration as a whole. Citizens, generally, as well as the representatives who exercise legislative and other authority in their behalf, must do their part in providing the conditions which preserve these interests and obligations and promote the development of the government service toward a model democratic institution." (Page 27)

Note: The above quotes are intended to establish the complete fallacy of the Wilentz opinion which stands in the way in many instances of the realization of the kind of democratic relations declared necessary in this report.

* * *

We also would refer the delegates to Assembly Bill No. 241, passed during the past session of the New Jersey Assembly but held in committee in the Senate. This bill sets forth a *modus operandi* for legislation which can well follow, to define and limit the Proposals as set forth subsequently in this brief.

We should like, here, to state our thinking on a question often raised concerning the alleged dangers of "outside influences" exerted upon employees who belong to a union. We are all familiar with the old-line argument, for example, that the AFL is controlled by racketeers and the CIO is controlled by communists. We submit, although this union belongs to neither of those national organizations, that these are dangerous generalities—dangerous to freedom and fair play. Labor unions, AFL, CIO or independent, are controlled, by and large, by the workers who belong to them. No racketeer can convert a large mass of workers to racketeering, nor

can a communist convert a large mass of workers to communism. The history of the labor movement has demonstrated repeatedly that, once aware of serious shortcomings on the part of their leaders, the workers either replace them with new leaders or rebel completely from the group which they consider improperly led. This fact, coupled with the accepted concept that membership in any organization of public employees should be on a voluntary basis, leaves no real danger to these so-called "outside influences."

* * *

PROPOSALS

In order to remedy the harm being done by the Wilentz opinion and to bring to the public employees of New Jersey the same guarantees of fundamental rights long extended to workers in private industry, we respectfully urge the delegates to the New Jersey Constitution Revision Convention to write into the new document the following provisions, here set down in the wording of the layman:

1. The right of all public employees to belong to a union of their own free choice shall not be denied.
2. The right of the State of New Jersey, counties, municipalities, school districts and any joint boards or intra-state commissions (such as Passaic Valley Water Commission) to negotiate with any employee organizations, within the limits set forth by the Civil Service Law, shall not be denied.
3. The Civil Service Commission and/or the Governor shall be empowered to investigate and submit recommendations in matters involving a labor dispute between any group of public employees and the employing agency, be it the State of New Jersey, a county, municipality, school district or intra-state commission (such as the Passaic Valley Water Commission).

* * *

In conclusion, may we quote from the address delivered by the Honorable Alfred E. Driscoll, Governor of the State of New Jersey, at the opening session of the Convention:

"This kind of environment makes it all the more important that the organic law under which our state may live for the next century be confined to the establishment of sound structure, to the definition of official responsibility and authority, to the assurance of the fundamental rights and liberties of all the people. To do less is to fail in your trust. To seek to do more is to impose upon the future."

The public employees in New Jersey are an important part of "all the people." They feel justified in asking for any "fundamental rights and liberties" enjoyed by other people. As regards their relations with public management in New Jersey today, they are

not guaranteed those rights and, consequently, often find themselves denied those rights. Surely it is within the scope of the Constitution of the State of New Jersey to guarantee those rights.

Respectfully submitted,

N. J. COUNCIL, STATE COUNTY & MUNICIPAL WORKERS
(not conn. with CIO)

GIBSON LE ROY,
Executive Secretary

STATEMENT BY
NEW JERSEY EDUCATION ASSOCIATION¹

Proposal 11 (Mr. Glass)

Proposal that benefits payable by virtue of membership in any state pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.

Resolved, that the followed be agreed upon as part of the proposed new State Constitution:

1. Benefits payable by virtue of membership in any state pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.

Statement

The State has always recognized its moral obligation to pay the benefits promised by its state pension funds. Constitutional status merely eliminates uncertainty from the situation. The freedom of the State Government, on the other hand, to manage its financial problems as need arises would be in no way affected by this proposal. The state pension funds should be continued on a sound actuarial basis to make lifetime service to the State attractive to able persons, including teachers.

This recommendation appeared in the Report of the Commission on Revision of the New Jersey Constitution of 1942 and is found in the present New York State Constitution.

Proposal 13 (Mrs. Peterson)

Proposal that rights or privileges granted public employees under tenure or civil service be deemed contractual, not to be diminished or impaired.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. Rights or privileges granted public employees under tenure or civil service shall be deemed contractual, not to be diminished or impaired.

Statement

As a result of its experience since 1909 with tenure laws in the public schools, New Jersey has found that the children and citizens of the State benefit from this policy. Likewise the civil service policy of the State has improved the quality of persons accepting public positions.

This recommendation would give assurance that the benefits

¹This statement was the basis of the remarks made by Miss Bertha Lawrence before the Committee on July 9, 1947 (morning session).

granted under the tenure and civil service laws cannot be taken away, and that able men and women can build their lives upon a permanent career of public service. It would strengthen the State's personnel practices for public employment, and would offer substantial non-financial rewards to capable public employees.

Proposal 8 (Mr. Glass)

Proposal that the Bill of Rights (Article I of the present State Constitution) make it clear that there shall be no discrimination under the law against any citizen because of race, color, or religion. Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. There shall be no discrimination under the law against any citizen because of race, color, or religion.

Statement

The bill of Rights should guarantee the privileges of democracy to all citizens and should prohibit discrimination on the basis of race, creed, or color.

Proposal 7 (Mrs. Peterson)

Proposal that provision be made for the use of the Initiative and Referendum.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. Provision shall be made for the use of the Initiative and Referendum and such provision shall harmonize as nearly as possible with that outlined in Article IV, sections 400 to 408, inclusive, of the most recent revision of the "Model State Constitution" of the National Municipal League.

Statement

This is a plan which has worked successfully in other states, by which the people can, if they so desire, express their will.

JOINT STATEMENT OF THE NEW JERSEY
FARM BUREAU AND THE NEW
JERSEY STATE GRANGE

To the Delegates of the Forthcoming Constitutional Convention and to the Public:

The membership of the organizations which respectively we represent long have considered the State Constitution of paramount importance. Accordingly, to the end that its purity may conform to our highest ideals, the membership of both our organizations, from time to time for many years, formally have proposed specific amendments. Probably no other civic organization has done so much in this respect. At legislative hearings on a proposed new Constitution, in 1942, our representatives attended all meetings, making, we believe, the most constructive body of suggestions there or elsewhere yet presented. At no time, however, have we regarded our present Constitution either antique, obsolescent, or generally ineffective. That which we sought is to make a relatively good thing better.

We have always dissented, however, from all plans of submission not in accordance with the Constitution. We have held and still hold that such constitutions are contracts between sovereign citizens, that only through voluntary contract, expressed or implied, that is, through mutual agreement in some form, do such citizens maintain social life. Our first Constitution contained no provision for its own amendment. But change became necessary and recourse had to be had to the inherent power of free men. They expressed that power in the second section of the first Article of the new Constitution, saying “. . . and they (the people) have the right at all times to alter or reform the same, whenever the public good may require it.” This section was then relied upon, as it is again being relied upon, as justification for changing in the manner proposed. But this is only a statement of “power” to make the change, and without more is almost meaningless. It does not tell “why” or “when” or “how” changes shall be made. For that, recourse must be had to the ninth Article, which does plainly tell us “how” and “when” it shall be done, and also plainly implies “why” changes should be made. All these are being ignored. By what mental processes may it be determined that one indefinite part of a contract may be relied upon for doing a specific thing and at the same time another part of the same contract, which specifically and in detail tells how it may be done, should be rejected we fail to understand.

The convention method clearly is available only in the event of

extreme emergency or when duly authorized in the existing Constitution. Nor has it been customary for many years to employ the convention method except when there has been previous constitutional authorization therefor. Is there now such an emergency? Upon this we sought the advice of our counsel for many years, Mr. J. B. R. Smith, inquiring whether in his opinion there were changes so desirable that they might justify their adoption by an unauthorized method. His reply has been presented to the entire membership of our governing bodies and his suggestions have been unanimously adopted as those of our respective organizations. We believe it sounds a higher note than yet has been attained, and merits the serious consideration of all. In it Mr. Smith not only reasserts the divine origin and nature of our personal freedom, but makes its recognition a condition precedent to participation in the state's government. As some have said, he proposes to put God into the Constitution. In addition to Mr. Smith's suggestions which follow, relating only to the "substance" of the Constitution, there are also several changes in "form of government."

"To the Executive Officers of the New Jersey Farm Bureau and the New Jersey State Grange:

As I understand, you seek a State Constitution in harmony with the most enlightened ethical and political ideals of our times—an end greatly to be desired. I do have in mind that which I consider such ideals. I shall be glad to state them as concisely as I am able.

In attaining this end I do not have especially in mind the many excellent current suggestions for changing the 'form' of government; nor yet the unworthy ones. I am confident that the Convention as it now is being organized will deal satisfactorily with the unworthy ones. And, as desirable as the meritorious ones may be, and several of them we all have been urging for many years, a little longer wait, in my opinion, necessary to obtain lawful orderly procedure should have been endured. But there are other suggestions for improvement which have been forming in my mind for several years, the need for which now seems to me so acute that their speedy adoption, even at the expense of orderly procedure, now seems justifiable.

Written constitutions generally heretofore have not adequately expressed in language the 'substance' of the 'society'—the true 'nature' of the 'people' and of the 'individuals,' for which the organic corporate state exists. They also fail to express the nature of and the purpose of the 'state' itself, as well as the actual 'relationship' between the people and the corporate state. They almost entirely are concerned only with the 'form' and 'structure' of the state's 'government.' Yet precise knowledge of all, at all times, has been of primary importance; and recent events, both at home and abroad, have been accumulating so rapidly that such expression now seems necessary. Are we free, independent, sovereign individuals, or are we subject to coercion and to dictators? Is ours a limited state of sovereign people, or a sovereign state of subject people? Soon we must answer these questions. Alien political thought is compelling it. Should it not be answered in the new Constitution?

Heretofore such provisions in written constitutions probably have not been needful from a practical viewpoint. We have been a peaceful, homogeneous, isolated people. In a general way we thought we knew what personal freedom, independence, sovereignty, meant to us, and were satisfied. We were not much interested in either alien political principles or practices. Nor were aliens much interested in ours. And all little realized

the transcendent distinction between those opposing primary moral forces, the ones which tend toward inherent personal freedom, independence, sovereignty, equal personal liberty and equal personal rights; and the ones which tend toward personal control, coercion, rule, privilege, dictatorship, subjection, and eventual slavery.

Consequently, we failed to realize that not only these latter forces might actually operate within our political structure and eventually dominate previously free political organizations, even those created for the express purpose of protecting our own personal freedom from alien control; and even though fashioned in accordance with the most complete republican forms. We did not realize that after all, the most important thing in the organic political state is the 'substance,' that is the nature, the reason, the will, the morality, the idealism of the individuals which underlie the structure of the state and the form of its government.

Accordingly, is not the most important thing in the contract by which a free people incorporate a political state limited in purpose to the protection of that freedom, a statement not only of the nature and purposes of the state but also of those who comprise its membership, in language understandable not only to the parties thereto but to all who may have an interest in its interpretation? True, in our own charter contract we do find a statement that its purpose is to 'transmit to posterity' the blessings of the liberty enjoyed by the people at that time. And later there is a brief reference to 'freedom,' and to 'right.' But what do these words as there used mean, either to the average citizen or the average alien? Or for that matter, to members of the judiciary? Words have so many meanings, to ourselves, and to others. Could not and should not the meanings there intended be definitely expressed?

To do this, indeed, would consume some space, but far less than some persons are planning to consume in incorporating into the Constitution mere matters of legislation, which in passing one should observe, have no proper place in constitutions.

Had it been possible to have expressed this at the beginning we not only would not now be so confused in our own minds regarding our own freedom but also regarding the true nature of the state created to protect and to preserve it. And we would have presented a much more attractive ideal for the even more confused alien peoples with whom we need now to cooperate. But of even immediately greater importance, those citizens of alien thought and purpose would have been able to understand more clearly how far they may go in this state and how far they may not go. As citizens, so long as they outwardly conform to our conceptions of equal liberty, of justice, and assume the burdens of citizenship, they merit the equal protection afforded by the state. But if at the same time they are opposed to our American principles, or to our State, they should have no part in the State's government, including its electorate.

The disposition to tolerate persons with such thought and such purposes in our government has long been incomprehensible to me. As well tolerate atheists in the management of our religious institutions, or competitors in our economic corporations. No doubt the idea grows out of the fallacious notion that all citizens have a 'right to vote.' But on the face of it, this isn't so. The 'electorate' is not synonymous with 'citizenship.' Such a right never has existed in any American state. Voting in any society among free people is not a right. It is a trust, a duty—the solemn duty of a fiduciary, and an unfaithful trustee is a dishonorable person. Furthermore, there always have been excluded from American political electorates certain citizens. In our State, among others, at various times there have been excluded minors, mental incompetents, paupers, certain criminals, persons without property, and all females, as well as all persons who fail to qualify, according to election statutes. Again, in private corporations, business organizations often exclude certain shareholders, and many religious organizations have as members those who have no authority over spiritual affairs. Is it not apparent that the list of unqualified voters should include also those citizens who are opposed to

the purposes for which the State is created? And is it not equally apparent that such citizens also should be excluded from all connection with the management or operation of the several departments of the corporate state, whether the executive, the legislative, or the judiciary, and is not now the time that such action should be taken?

I have been urged to include in this letter a formal statement, as succinct as possible, of that which I think the Constitution should include upon these subjects. This I hesitate to do. That is properly the business of the collective mind of the Convention delegates. Furthermore, I have not, and perhaps no single individual has sufficient skill. To accomplish so important a task needs the collaboration of all who have a will to assist. Nor may perfection even then be expected. But as we increase in knowledge, progressively higher ideals will be conceived, and then we may correct and amend that which at that time will appear existing errors. To the end then that that which I have in mind may be better understood, and which possibly may be employed as a starting place for such collaboration, I submit the following outline:

'PREAMBLE

We, the representatives of the people of New Jersey, in order that the true nature of the inherent freedom, independence and sovereignty of our people, and the nature and purpose of our state, better may be understood and protected, do ordain and establish this Constitution.

'Article I, Section 1. We declare our conception of the *nature of our freedom and limit of our liberty* to be:

'1. Origin of mankind and of law: There is an omnipotent, omnipresent, omniscent force, a universal creator and giver of all supreme law. We call that force "nature and nature's God."

'2. Nature of mankind and of human government: In the divine plan of that force all rational beings are created *free* to reason, to judge, and to will, independent of similar beings—sovereign, governor, ruler of self and only of self. This is the true basis of ethics and of society.

'3. Limit of liberty: Subject to these supreme laws, every such being is completely at "liberty" to govern himself according to his will, but may not lawfully govern any similar being, except when necessary to protect his own inherent freedom.

In society this "liberty" is limited only by the equal liberty of every other such being, and must be exercised only in harmony with the equal right of every other such being, according to universal law.

'4. Origin of rights: This freedom and this equal liberty to assert this freedom are inherent. It is the primary inherent right. From this right emanate all other rights, likewise inherent and unalienable, including that of life, of health, of contract, to personal pursuit of happiness, to work, to personal possession of lawfully acquired property. From the inherent right of contract, expressed or implied, emanate all other rights, alienable and transitory.

'5. Origin and nature of justice: The practical determination and enjoyment of these rights is that which we regard true justice. It is ascertained through harmonious adjustment of the voluntary acts of such beings when in relationship with one another, according to our universal laws of personal freedom.

'Article I, Section 2. Nature and purposes of the State.

Free independent sovereign citizens may through lawful contract associate themselves into limited corporate states for the protection and promotion of such freedom, independence and sovereignty, rights and justice, but that sovereignty itself must continue to reside in the citizen. The limited state so organized is and must remain simply the sovereign citizens' agent for the purposes expressed. There cannot at the same time be a sovereign state and sovereign individuals. Either there are sovereign citizens of limited states or sovereign states of subject people.

'Article I, Section 3. Nature and purpose of super-states.

Sovereign citizens having organized a limited state generally to protect and to promote that sovereignty, also may participate with citizens of

other such states in the organization of other limited states for special purposes having the same ends, but only such special ends, and the sources of such super-states are in the individuals, not the existing state.

'Article I, Section 4. Citizenship.

'All citizens are members of the corporate state and not only the Fourteenth Amendment of the Federal Constitution defining "citizens" must be accepted, but also we need to say that citizens shall not be disturbed in the exercise of their inherent liberty to think, to speak, even to act in contravention of the principles here expressed, so long as they do not impinge upon the equal liberty of others, and continue to contribute their equitable share to the maintenance of the state. But when such citizens persist unreasonably in opposition to these principles or to the corporate state, they shall not be considered a part of the government of the state and shall be ineligible to the electorate or to any office or employment in the government.

'Article I, Section 5. The electorate.

'The electorate, being not a part of the structure of the state, but only a part of its government, there exists among free people no personal right in its membership, either inherent or contract, but rather a duty, a trust, a fiduciary obligation, to be assumed only by those who are competent to execute the trust, and are personally in sympathy with the purposes for which it was executed.

'Article I, Section 6. Nature of political government.

'Among states of free people the word "government" shall apply only to the government of the limited corporate state. It shall not be held to apply to citizens who by inherent right govern themselves, not in accordance with the fiats of statemen, but with universal principles of right. Rights, as already we have seen, emanate, not from statemen but from nature and nature's God; and virtue, among free people, likewise is an emanation of freedom, not of external control. The function of corporate governments is to attain the purposes for which the corporation, whether political or private, was organized—to make the corporation efficient in its specific purposes, not to control the lives of its members. When doubts arise they are to be resolved according to the universal laws of justice, which are to be construed in a manner most favorable to conceptions of freedom, and violations of which laws are cognizable by systems of judicature established by the associated will of sovereign individuals.

'Article I, Section 7. Imperfect condition and final destiny of states of free people and of despotic states.

'In an imperfect world neither "absolute" personal freedom, independence, sovereignty nor their several negations are now attainable, but in civics, as in all life, there are definite trends in both directions; the first leads to social harmony, love, perfection, God; the second leads to social strife, hate, disintegration, death. Men and nations and states adhering to the first merit the cooperation of all similarly minded, and receiving it, will endure; those adhering to the second will continue to merit and to attain the fate of despotic men and states throughout recorded history.'

All of which is respectfully submitted for your consideration.

(Signed) J. B. R. SMITH"

With reference to changes in the "structure of the state" and the "form" of its government, there is so much to be said that it seems fitting that we more clearly present our ideas in a subsequent communication. Briefly, it may be said that in the main, they are to be found in the official minutes of our respective organizations and also in the briefs presented at the legislative committee hearings in 1942, which have been printed in the official minutes of those hearings with the exception of the last one which, perhaps through inadvertence, seems to have been omitted. Regarding changes in the "form

of government," generally it may be said we are very jealous of the independence and the integrity of our State Board of Agriculture and its Secretary, and the preservation of the specific funds dedicated to highway and to other uses beneficial to agriculture. Regarding changes in the "structure," we have long favored biennial sessions of the Legislature and adequate compensation of legislators, with corresponding extension of terms of office both of legislators and of the Governor. Regarding the judiciary, we recognize the great desirability for revision, but as laymen, regard the kind of change beyond our sphere. We also favor a more economical method of amending the Constitution, but are unalterably opposed to any provision which ultimately may lead to any provisions which change the present method of county representation in the Senate. This we regard a political right as sacred to all of us as is the division of government into three independent branches, and for the same reasons.

Respectfully submitted,

NEW JERSEY FARM BUREAU,

HERBERT W. VOORHEES, *President.*

NEW JERSEY STATE GRANGE,

FRANKLIN C. NIXON, *Master.*

MEMORANDUM OF THE
NEW JERSEY FARM BUREAU AND
THE NEW JERSEY STATE GRANGE
RELATING TO AMENDMENTS

Upon this subject we believe our position is well understood and that it will be needful to say only a few words. We seek only the most economical and the most simple method of amendment, compatible with sound and deliberate consideration, and at the same time one which will not open the way to procedure which will destroy the balance of power between urban and rural communities in the Legislature.

To the first mentioned end, we would favor submission to the electorate at general rather than at special elections. To the second, we still are of the opinion that the subject is of too serious a nature to justify the action only of one Legislature, even though it be by a two-thirds, rather than majority, vote of the respective branches of the Legislature. We are conscious of the practice in many states which requires action of only one legislature, but we are yet to be convinced of its wisdom. We are all too conscious of abuses emanating from hastily considered action. Legislative action, indeed, often must be hastily taken, but legislation is of quite different nature from a well-considered contract creating a corporate state, such as we have reason to expect the proposed Constitution to be. Furthermore, we have no sympathy with the argument that constitutions should be subject to change in accordance with changing social custom. To express such change is a legislative function, and it should be provided with reasonable power speedily to perform that function. But a constitution is quite a different matter. It properly expresses current understanding of the fundamental principles of right and wrong, and provides the most efficient machinery for giving effect to those principles. Those principles are eternal. They do not change. Our understanding of them does change, as does our understanding of the most efficient machinery. But the rate of increase in wisdom is far slower than is that of change in social custom. The one is governed by increase in actual knowledge, the other more often by ephemeral emotion. With a duly flexible Constitution, such as one for which the Governor so ably argued, there seems to us that caution and judgment both suggest time for reasonable consideration for amendments. Furthermore, that which has been found workable, though possibly not the best, should be safer than hastily considered novelties.

We need now to consider that which is of primary importance, at

least in all states where there is extreme distinction between the economic and the social needs of the different communities. It is the preservation of equal geographical representation in one branch of the Legislature. This is in entire harmony with the system of checks and balances so sacred to our political ideals. And it is not only of vital importance to rural citizens in this State, where there is so heavy a majority of urban citizens, and who have on so many occasions manifested a will to deprive citizens of rural counties of their natural rights. The principle was recognized in our Federal Constitution. Had it not been, history all too painfully tells us what would have happened to our own New Jersey, situated as it was between the greater states of New York and Pennsylvania. That one branch of the Legislature should represent majorities the other, at least in some measure, should represent minorities, is at the very foundation of all states of free people, and must remain there at least until civilization has attained that measure of progress necessary to eliminate objective selfishness from human natures. As it is now, no tyranny is more tyrannous than an unrestrained majority, not even an unrestrained minority or personal tyrant. Hence the necessity for the restraints emanating from the respective methods of constituting the respective branches of our Legislatures.

In our first Constitution there was equal county representation in both Houses, with provision for increasing representation in the lower House by legislative act when equalization made such a course desirable. The entire State then was essentially rural. At the time of the drafting of the present Constitution in 1844, urban communities were increasing in importance though rural communities still predominated, especially so in the Convention, yet the merit of the dual system of representation was adopted. That is, the rural representatives recognized the justice of minority representation in one House. Now that positions are reversed, and that which was the minority has become the majority, those of the present minority shall expect, both as a matter of common courtesy and of natural justice, and inherent right, that the same balance of power shall be maintained, not only in the Constitution now to be written—that has been provided for in the enabling act—but in provisions therein for future change.

All this is being written because we have heard with much regret of members of the Convention advocating amending provisions which would make possible conventions in the future which would function without the restraints in this respect imposed upon this one. Please let our position upon this question be made clear. We know of no objection to the convention method in itself. It may be a very desirable method of making desirable change. But we are utterly and completely opposed to the convening of any convention,

or of any other provision which would make possible the abolition of this right of minority representation in one branch of the Legislature, or of any other change which would enable future conventions or future Legislatures to impinge upon the inherent rights of free men, whether natural or the result of political contract. We are confident that only to indicate to your Convention the abuses inherent in this or any similar suggestion will be sufficient to prevent its adoption.

NEW JERSEY FARM BUREAU
HERBERT W. VOORHEES, *President.*

NEW JERSEY STATE GRANGE
FRANKLIN C. NIXON, *Master.*

July 2, 1947

LETTER OF THE
NEW JERSEY FEDERATION OF
WOMEN'S CLUBS

NEW JERSEY STATE FEDERATION OF WOMEN'S CLUBS
275 West Summit Street
Somerville, N. J.

Committee on Human Rights, Privileges, and Amendments:

The Executive Committee of the New Jersey State Federation of Women's Clubs submits herewith its proposals on the subject of human rights in the revised Constitution:

1. We believe that the Constitution should be a statement of general principles upon which the State Government and its legislation shall rest. It should not include specific provisions covering any particular segment of the population.

2. An adequate expression of principles applying to the rights of the individual is of equal force whether applied to so-called majority or minority groups.

3. Specific naming of classifications may be dangerous since it lays open the possibility that a later and new development may leave some group without protection. The position of the New Jersey State Federation of Women's Clubs is unequivocal in its support of a clause opposing discrimination against an individual on grounds of race, color, creed, or national origin.

4. The Federation has consistently opposed an amendment to the Federal Constitution for so-called women's rights, believing that such an amendment would jeopardize the protective legislation which, through the years, has been painstakingly added to our statutes, safeguarding the position of women in labor and other situations due to biological and other considerations connected with their sex. We realize that discrimination does, at present, exist against women on account of sex but believe that redress should be had through legislation rather than through a constitutional provision. This applies to our State Constitution as well as to the Federal Constitution.

Respectfully submitted,

ALICE L. CORNELISON, *President*
New Jersey State Federation of Women's Clubs

Revision and Amendment

We believe that the Article on Revision and Amendments should be sufficiently flexible so that if certain provisions of the new Con-

stitution prove ill-advised they can be amended without too great delay. The suggestion that there shall be a referendum every 20 years in order to give the people an opportunity to express their opinion on the need for change is desirable, with the additional proviso that more frequent amendments may be made if the demand requires. This will insure a Constitution which keeps abreast of changing times. Such a provision will have the added advantage at this time that individuals or pressure groups, who might vote against acceptance of the entire Constitution because of their opposition to a single section, would be willing to support it in view of the fact that the instrument may be amended with relative ease if certain provisions prove harmful or unworkable.

Alice L. Cornelison, *President*

LETTER OF NUTLEY CHAPTER, NEW
JERSEY INDEPENDENT CITIZENS LEAGUE
(Affiliated with PROGRESSIVE CITIZENS OF AMERICA)

August 5, 1947.

Committee on Rights and Privileges,
Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

Gentlemen:

The Nutley Chapter of the New Jersey Independent Citizens League affiliated with the Progressive Citizens of America, submits herewith two resolutions for consideration of the Constitutional Convention:

RESOLUTION ON RIGHTS OF WORKERS

WHEREAS, the New Jersey Legislature has, at its last session, passed a bill restricting certain categories of labor from exercising their right to strike; and

WHEREAS, the strike weapon of labor is used as a last resort in order to maintain or better its economic conditions; and

WHEREAS, any law compelling labor to continue working under adverse conditions is tantamount to enslaving the worker; and

WHEREAS, compulsory arbitration deprives the organized worker of his only remaining effective economic weapon; and

WHEREAS, it is in the interest of the overwhelming majority of the people of the State to safeguard this basic right of worker;

THEREFORE, BE IT RESOLVED, that the Constitutional Convention include in the Bill of Rights section of the proposed Constitution a provision *guaranteeing* all organized labor the right to strike if it so elects.

RESOLUTION ON RACIAL DISCRIMINATION

WHEREAS, there exists in the State of New Jersey discrimination in various forms which precludes certain elements of the population from enjoying civil and social rights accorded others; and

WHEREAS, these discriminatory policies are employed through subterfuge and circumlocution;

THEREFORE, BE IT RESOLVED, that the Constitutional Convention include a provision prohibiting the discrimination because of race, creed or social views in any civil, educational, political, economic enterprise engaged in by any individual, corporation, group, association, either private or public, within the State of New Jersey; and

BE IT FURTHER RESOLVED, that any discriminatory act be punishable as a crime and subjected to severe punishment in the State courts.

Respectfully submitted,

NUTLEY CHAPTER N. J. INDEPENDENT CITIZENS LEAGUE

By: ROBERT GREENE,

Chairman, Legislative Comm.

LETTER OF
NEW JERSEY MANUFACTURERS
ASSOCIATION

July 29, 1947.

Honorable Robert Carey,
2595 Boulevard,
Jersey City, N. J.

My dear Sir:

We address you as a member of the Committee on Rights, Privileges, Amendments and Miscellaneous [Provisions] of the New Jersey Constitutional Convention of 1947, which Committee, we are informed, voted 7 to 4, to sponsor a clause in the new Constitution, Article I, reading as follows:

"The right of privately employed workers to organize and bargain collectively and the right of publicly employed workers to organize and present to, and make known to the State, or any of its political subdivisions, their grievances and requests, through representatives of their own choosing, shall not be impaired."

On behalf of the more than 6300 members of our Association, we wish to express our most vigorous opposition to such a clause in any part of the proposed new basic law of New Jersey.

The purpose, meaning and actual effect of such a clause and particularly the closing words, "*shall not be impaired,*" is to put labor organizations above and beyond any form or measure of regulation or control by legislative action.

It is a basic and broad delimitation of the authority and power of every future legislative body and would grant dangerous anti-public privileges and immunities to all who professionally or otherwise engage in or become party to organizations of labor. The terrible abuse of power by labor union leaders which this country (and our State) has witnessed in these recent years makes such a proposal nothing short of preposterous and certainly not in the public interest.

We most earnestly suggest and urge that this proposed clause has no proper place in any part of any draft of a Constitution for New Jersey. We respectfully urge that your Committee re-consider and withdraw its 7 to 4 approval of such a clause.

The proposed clause is so fundamentally improper that it would be bound to nullify the many provisions of the proposed new Constitution which might be admirable. We regret to have to say that we would oppose throughout the State any final draft of the proposed new Constitution which contained the proposed clause. In taking such a position we would be considering the good of all the people of the State; we would not be acting selfishly on behalf of

business; we would not be injuring the collective bargaining rights of labor; we would not be limiting in any manner the right of the Legislature to pass such laws as seem advisable from time to time, in the public interest.

Very truly yours,

NEW JERSEY MANUFACTURERS ASSOCIATION
H. W. JOHNSON, *President*

LETTER OF NEW JERSEY MANUFACTURERS' ASSOCIATION

August 16, 1947.

Mr. John F. Schenk,
Flemington, New Jersey.

Dear Mr. Schenk:

It is your privilege to be a member of the New Jersey Constitutional Convention of 1947 and the people of New Jersey are fortunate that such a large group of distinguished citizens is to devote so much of their time, especially at this time of year, to this important subject.

I would like to draw your attention specifically to the clause in the new Constitution, Article I, proposed by the Committee on Rights, Privileges, Amendments and Miscellaneous, reading as follows:

"The right of privately employed workers to organize and bargain collectively and the right of publicly employed workers to organize and present to, and make known to the State, or any of its political subdivisions, their grievances and requests, through representatives of their own choosing, shall not be impaired."

As far as privately employed workers are concerned, there is and hardly can be any question of their right to organize and bargain collectively. It would seem entirely unnecessary to state the matter in the new Constitution any more than to state many other rights which belong to the citizens of this State. It must be recognized, however, that none of these rights are absolute and to be enjoyed regardless of their effect on other people. The right of free speech is not absolute in that it does not permit, for instance, of slander.

My principal objection is to the words "shall not be impaired." The definition of this word (*Webster's New International Dictionary, Second Edition*) is "To make worse; to diminish in quantity, value, excellence or strength; to deteriorate; damage." Synonyms are given as "decrease, lessen, reduce, weaken, enfeeble, harm, hurt, mar, spoil." The end result of use of the words "shall not be impaired" is to put organizing and collective bargaining beyond any form or measure of regulation or control by legislative action. Any such legislation would almost positively become a Supreme Court matter in connection with the definition of the word "impair." It is a word that has already been very much misunderstood, requiring Supreme Court decisions, in connection with business contracts.

If there should seem to be sufficient reason, which I doubt, for stating the right to organize and bargain collectively, then I think the words that should be used should be "is hereby affirmed" instead of "shall not be impaired." Any control of such rights, for the

benefit of the people as a whole, should rest with the Legislature, as the need may arise and in the public interest.

The above is not written selfishly on behalf of business nor with the desire to injure the collective bargaining rights of labor; it is written in the interest of all the people of the State and in the hope that the new Constitution which your Convention sponsors may be fundamentally sound and one of which we can all be proud.

Very truly yours,

H. W. JOHNSON, *President*

RECOMMENDATION OF THE NEW JERSEY STATE BAR ASSOCIATION COMMITTEE ON THE STATUS OF WOMEN

*(Adopted by the New Jersey State Bar Association,
June 13, 1947)*

1. That the New Jersey State Bar Association endorse the proposal that a clause be placed in the new Constitution which will embody the principle that no distinction shall be created between the rights of men and women to vote, to hold office, or to enjoy equally all civil, political, religious and economic rights and privileges, and to urge its adoption as necessary to clarify and establish the legal status of women.

2. That this Committee be given the authority to present this endorsement to the Convention, together with copies of all of the reports heretofore made by the Committee on the Status of Women, and to aid the Convention in assembling the material upon which this report is based.

One of the major subjects which will engage the attention of the Constitutional Convention will be the proposal to include in the new Constitution a clause which will provide: "No distinction shall be created between the rights of men and women to vote, to hold office, or to enjoy equally all civil, political, religious and economic rights and privileges."

If we are to have a modern Constitution, and avoid confusion respecting the legal status of women, the legal status that women have attained must be established and safeguarded. The present Constitution still keeps women in a subject class, although by peaceful revolution women have gained a legal status almost equal to that of men and the disabilities of the common law have reached almost the vanishing point. The main difference which now exists between the rights of men and women is that the rights of men are established by the Constitution, while the legal status of women has been gained by legislation and the assumption of right and the right to vote. There is no way by which women can achieve equal status as citizens and be brought out of this subject class, except by constitutional provision.

The demand for the removal of discrimination against women has become a world-wide movement. It is one of the principles set forth in the Charter of the United Nations. It has been given support in the platforms of both political parties. The New Jersey State Bar Association has approved of it in principle and has made a great contribution to the movement by the study of the legal status of

women in our State. We believe the reports heretofore made by this Committee and the action of the Bar Association in approving of the principle will facilitate the work of the Convention.

In furtherance of these reports we believe we should make some observations on the legal status women have attained by legislation and the inadequacy of it to meet modern conditions. Women now own more than half of the wealth of the country and are assuming great public responsibilities as legislators, jurors, administrative officers, and even hold minor judicial positions. Through these efforts the property rights of men and women have become interwoven in our great political and social system. An impairment of the rights of women would affect our whole economy and becomes a possibility which should be guarded against since they are subject to alteration and repeal at the will of the Legislature.

The inequalities of power and protection do not make a solid foundation in law which is necessary for the protection of great wealth or for the performance of public services. The right to be elected to the Legislature, to hold administrative and judicial positions is open to challenge. These rights were the exclusive rights of men at the time of the adoption of the present Constitution, according to the rulings of our courts, and if they can be extended to women at all, must be by legislative enactment. It is certain that the Legislature cannot extend the right to be elected to the Legislature to women, and if the Legislature is limited in this respect, its power to qualify women to hold other public offices is subject to attack. Women are serving on juries under legislative enactment but the courts have not passed upon the validity of it, the only reference to it in court decisions is *dicta*. But even court decisions do not make a safe ground for the performance of such rights, since courts have the right to reverse themselves and the subject matter can be altered by legislation.

In spirit, women have attained a legal status equal with men, but in fact they are still in a subject class. This is incompatible with the right to vote and with the responsibilities women are assuming. The proposed equal rights clause would confirm the rights women now enjoy and clothe them with the power and dignity to assume full responsibilities as citizens, and an untrammelled right to opportunity and self-development.

LETTER OF NEW JERSEY STATE COUNCIL,
CONGRESS OF INDUSTRIAL ORGANIZATIONS

August 19, 1947.

To: Delegates to the Convention on the Constitution

Re: Periodic Revision

Dear Delegate:

You and your fellow delegates to the Constitutional Convention are to be commended for the fine spirit of unselfishness, nonpartisanship and statesmanship generally shown thus far in framing a new Constitution for the people of New Jersey.

Since we have not hesitated to criticize some major faults in committee reports, we feel that the devotion of duty and cooperative efforts of the majority of the delegates during these hot summer days should not go without praise.

At the same time, the C.I.O. would like to call to your attention a serious omission of one of your Committees from its tentative draft. This is the failure to include in the amendment proposals a provision giving the people of this State an opportunity every 20 years to vote on the question of whether or not to call a constitutional convention to bring our basic law up to date.

This does not mean, as some have contended, that our charter will be rewritten completely every 20 years. It does mean that periodically the people of this State will be given an opportunity to decide whether or not such a revision should be undertaken. Experience in the eight other states which have such provisions in their basic law proves that the people generally vote "no" on the question of authorizing a constitutional convention—and only support revision when it is absolutely and urgently necessary.

You may recall that in 1944 the C.I.O. opposed the proposed Constitution principally because of its failure to ease the amendment process and because of its failure to include provision for submitting the question of revision to the people periodically.

At this time, we are anxious to support an improved Constitution for the State of New Jersey, providing it does not tie the people's hands for another 104 years.

We, therefore, respectfully request that you give most serious consideration to an amendment which we understand will be offered from the floor to the Rights, Privileges and Amendments Committee Report, providing an opportunity for the people to vote every 20 years on the question of revising the State's charter.

Sincerely yours,

CARL HOLDERMAN, *President*

LETTER OF NEW JERSEY STATE
FARMERS UNION COUNCIL

25 N. Montgomery Street
Trenton 8, N. J.

July 7, 1947.

Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

Gentlemen:

The New Jersey State Farmers Union Council, meeting July 3, passed unanimously the following resolutions:

(1) Resolved, that the present method of selecting members of the State Agricultural Committee, or Board of Agriculture, and the State Secretary of Agriculture, is democratic and non-political and should be continued without change or amendment of the constitutional provisions involved.

(2) Resolved, that the Farmers Union support the proposed civil rights amendments as filed by the Joint Committee on Constitutional Bill of Rights.

(3) Resolved that the secretary transmit these decisions to the Constitutional Convention in New Brunswick.

Yours very respectfully,

ED YEOMANS, *Secretary*

TELEGRAM OF NEW JERSEY STATE
FEDERATED EGG PRODUCERS COOPERATIVE
ASSOCIATION, INC.

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THE NEW JERSEY STATE CONSTITUTIONAL
CONVENTION—RUTGERS UNIVERSITY NT—

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THE NEW JERSEY FEDERATED EGG PRODUCERS COOPERATIVE ASSOCIATION INC. ONE OF THE LARGEST COOPERATIVE ORGANIZATIONS IN THE STATE OF NEW JERSEY WITH A MEMBERSHIP OF 250 FARMERS HANDLING 60 MILLION EGGS PER YEAR UNANIMOUSLY RESOLVED AT A MEETING AT ITS BOARD OF DIRECTORS LAST NIGHT 8 JULY TO RECOMMEND TO THE STATE CONSTITUTIONAL CONVENTION THAT THE FOLLOWING BE INCLUDED IN THE NEW JERSEY STATE CONVENTION. ONE, THAT THE SECRETARY OF AGRICULTURE OF THE STATE OF NEW JERSEY BE ELECTED BY THE VARIOUS AGRICULTURAL BOARDS COMPRISING THE STATE OF NEW JERSEY AS IS PRESENTLY DONE. IT IS POINTED OUT THAT A BETTER AND MORE DEMOCRATIC CHOICE CAN BE MADE BY THOSE WHO ARE VITALLY CONCERNED WITH AGRICULTURE WORK. TWO, THAT THE COOPERATIVE MOVEMENT IS VITAL AND MOST IMPORTANT TO THE FARMER AND TO THE MAINTENANCE OF A STRONG DEMOCRATIC STATE AND COUNTRY. THERE ARE MANY COOPERATIVES IN THE STATE OF NEW JERSEY AND THEIR CONTRIBUTION TO THIS STATE HAS BEEN TREMENDOUS. INsofar AS CONTRIBUTING TO THE WEALTH OF THE STATE IN IMPROVING THE CONDITIONS OF THE FARMERS OF THE STATE, IN DEMOCRATICALLY PLAYING A VITAL LIVING ROLE IN EVERY COMMUNITY AND IN DOING AN IMPORTANT JOB IN HELPING THE FARMERS AVOID CATASTROPHY, IT IS URGED THAT THE NEW JERSEY STATE CONSTITUTION GO ON RECORD AS APPROVING AND ENDORSING THE CO-OP MOVEMENT IN THE STATE OF NEW JERSEY. THREE, THAT A NEW JERSEY FAIR EMPLOYMENT PRACTICES COMMITTEE BE WRITTEN INTO THE BILL OF RIGHTS AND ESTABLISHED. WE ARE A GREAT DEMOCRATIC STATE IN A GREAT DEMOCRATIC COUNTRY AND THERE IS NOTHING THAT IS MORE CONSISTENT

WITH DEMOCRACY THAN THE ESTABLISHMENT OF A BODY WHICH WILL INSURE THAT THE RIGHTS OF ALL REGARDLESS OF RACE, COLOR, CREED, OR POLITICAL AFFILIATIONS BE PROTECTED AND PRESERVED, ESPECIALLY REGARDS EMPLOYMENT. SUBMITTED BY THE BOARDS OF DIRECTORS OF THE NEW JERSEY FEDERATED EGG PRODUCERS COOPERATIVE ASSOCIATION, INC.

N. BELYEV, SECRETARY

PROPOSAL AND RESOLUTION OF THE NEW
JERSEY STATE FEDERATION OF BUSINESS
AND PROFESSIONAL WOMEN'S CLUBS, INC.,
FOR AN "EQUAL RIGHTS" PROVISION

Article I* under Rights and Privileges refers to "men," "people" and "persons." There is no mention of "women." Usually, when the word "man" is used it includes "women," but the interpretation in the Constitution has not followed this line. This in fact is indicated by the special legislation which has been enacted applying to women only.

The New Jersey State Federation of Business and Professional Women's Clubs at their State Convention held in May, 1947, adopted a resolution requesting that the delegates to the Constitutional Convention include in the proposed new Constitution the statement that wherever the words "man" or "men," "person" or "persons," "people" or "peoples" are used, these also shall include "women." Their belief is by this means existing ambiguities will be eliminated.

Sex is not a matter of choice or right. It is a matter of birth and should be so regarded.

The general claim against full equality has been that as women are biologically different, women are the weaker sex. That claim is untenable.

Women's activities in this last war have disproved the myth that women are unable to compete with men in work requiring physical as well as mental skill.

Strength in men vary. All men are unable to perform the same kind or grade of work. This is also true of women.

The minority groups, except women, have been successful in having corrections made as to their rights, but women up to this time have not been successful in having all discriminations against them eliminated.

So-called protective laws for women are actually discriminatory laws.

Since women possess seventy (70) percent of the wealth in this country and constitute sixty (60) percent of the voting strength in the country, it is submitted that equality should be clearly defined.

There is no sex in brains.

Women, in all fairness ask that the New Jersey Constitution, under which they will live as well as men, be worded so that men and women shall have equality in all phases of human living, and

*Present New Jersey Constitution adopted in 1844.

therefore ask that the "Bill of Rights" be amended to amplify the words "man" or "men," "person" or "persons," "people" or "peoples," as used anywhere in the Constitution, to include women.

The Charter of the United Nations provides the following:

"To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the *equal rights of men and women* and of nations large and small."

The State of New Jersey should be as progressive as the United Nations.

Respectfully submitted,

NEW JERSEY FEDERATION OF BUSINESS AND
PROFESSIONAL WOMEN'S CLUBS, INC.

MYRA BLAKESLEE

GRACE J. FORD

MAY CARTY

LIBBY SACHER

M. M. CARPENTER, *Chairman*

Committee on Constitutional Revision

July 9, 1947

RESOLUTION OF THE NEW JERSEY
STATE FEDERATION OF BUSINESS AND
PROFESSIONAL WOMEN'S CLUBS

WHEREAS, on June 3, 1947, the voters of the State of New Jersey will vote for or against the holding of a State Constitutional Convention which shall prepare, for submission to the voters next November 4th for their adoption or rejection, in whole or in part, a new State Constitution, revising, altering or reforming the present Constitution; and

WHEREAS, it is the consensus of opinion of the members of the New Jersey State Federation of Business and Professional Women's Clubs that such proposed Constitution should contain a clause whereby discrimination between the sexes shall no longer exist;

RESOLVED, that in the event of the adoption of such Constitutional Convention, the members thereof be requested to insert in the Schedule or other place in the proposed new State Constitution, the following:

"Wherever, in this Constitution the term 'man' or 'men,' 'person' or 'persons' shall be used, the same shall be deemed and taken to include both sexes."

Resolution passed unanimously, at Atlantic City, May 17, 1947.

RESOLUTION OF THE NEW JERSEY STATE FEDERATION OF COLORED WOMEN'S CLUBS

WHEREAS, it is the object of the New Jersey State Federation of Colored Women's Clubs to "Work and Serve the Hour" in helping solve the many problems confronting the race, and to study the conditions in cities and counties, with a view to raising the educational, industrial and economics standards of all people and improve the public health and general welfare of the people of the State; and

WHEREAS, for the past 32 years this organization has conducted a program working toward equal opportunity for all people and the full enjoyment of the rights, privileges and benefits of the State of New Jersey; and

WHEREAS, it has long been recognized that the restrictive covenant is a device used by real estate interests in conformity with narrow community attitudes, to confine certain housing areas to favored racial groups and for the exclusion of other groups, most frequently the Jewish and Negro segments of our population; and

WHEREAS, a large percentage of the population of the State of New Jersey, in a general way, was denied opportunity for business and industrial employment (public utilities included) under the existing State Constitution until Executive Order 8802, superseding our state laws, was issued by the late President Roosevelt during the emergency, making such practices unlawful; and

WHEREAS, the recent survey of the school systems of the State of New Jersey, made by the N.A.A.C.P., showed the great extent of the segregation and discrimination in education as practiced in the State of New Jersey; and

WHEREAS, not much success has come out of remedies sought by education and legislation, because the average man holds hard to his prejudices, it is agreed that a strong and forthright declaration set forth in the Bill of Rights of the proposed new Constitution is needed, and will provide for all the people the instrument through which all rights and privileges accorded a citizen might be realized;

BE IT THEREFORE RESOLVED, that we do respectfully submit to and urge the adoption by the 1947 Constitutional Convention, the following:

1. That this paragraph, as written in the new New York Bill of Rights, be added to section 5 under "Rights and Privileges":

"No person shall be denied the equal protection of this State or any subdivision thereof. No person shall, because of race, creed, color or religion, be subject to any discrimination in his civil rights by any other

person or by any firm, corporation or institution, or by this State or any agency or subdivision of this State."

2. That the following sentence be added to section 17 under "Rights and Privileges":

"Property taken for public use shall be enjoyed without discrimination because of race, color, religion or national origin."

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the Constitution Convention, the subcommittee on Rights and Privileges, the press, and a copy recorded in the minutes of our 32nd Annual Convention.

The above resolution was ordered and adopted at the St. James A.M.E. Church, Court and High Streets, Newark, N. J., July 18, 1947.

Respectfully submitted,

N. J. STATE FEDERATION OF COLORED WOMEN'S CLUBS
(MRS.) RUSSELL C. CAUTION, *President*,
400 N. Indiana Ave., Atlantic City, N. J.

MRS. ELIZ. B. THOMAS,
Chairman, Legislative Committee

RECOMMENDATIONS OF NEW JERSEY STATE FEDERATION OF LABOR

(Excerpts from the State Federation's "Recommendations for Constitutional Changes," presented to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions)

* * * *

BILL OF RIGHTS

ARTICLE I

1. *Prohibition of Discrimination*

An effective and self-implementing prohibition of discrimination on the ground of race, color, creed, national origin or ancestry should be incorporated in Article I. It should assure the freedom from discrimination not only with respect to governmental acts, but also with respect to all rights inherent in the concept of a fair social order, including employment and education, as well as civil, social and political rights and liberties.

2. *Rights of Labor to Organize and Bargain Collectively*

We recommend the inclusion in the Bill of Rights of a clause, necessary in any modern constitution, providing an effective and self-implementing assurance and protection of the right to organize and bargain collectively. We suggest the following language:

"Employees shall have the right, free from interference or coercion, to form, join, organize or maintain labor organizations of their own choice, for their mutual aid and protection, to bargain collectively with their employers, and to peacefully strike and conduct peaceful activities in support thereof."

3. *Public Housing and Aid to Private Housing*

In view of the inclusion of paragraphs 19 and 20 in Article I, we recommend a provision therein enabling the State, the counties and the municipalities to engage in public housing and to provide assistance for private industry in order to eliminate sub-standard dwellings and provide adequate, decent and sanitary dwellings for the people.

4. *Avoid the So-called "Equal Rights" Amendment*

We desire to express our *opposition* to the inclusion of any so-called "equal rights" amendment which would abolish the existing laws protecting women in industry, such as the Minimum Wage Law and similar protective legislation.

RIGHT OF SUFFRAGE

ARTICLE II

1. *Eliminate the word "MALE"*

Our old Constitution limits the right of suffrage to "male citizens." This limitation should be removed.

2. *Eliminate the word "PAUPER"*

Our old Constitution deprives "paupers" of the right to vote. This relic of the past should be eliminated.

3. *Extend the franchise to persons who have reached the age of 18 years.*

We submit that our 18-year-old citizens are far better educated and are much more familiar with the processes of government, because of our schools, our newspapers and our radios, than were the 21-year-old citizens of 1844. They are entitled to the privilege of the franchise.

* * * *

CONSTITUTIONAL AMENDMENTS AND REVISION

ARTICLE IX

We believe that no constitution can properly provide a democratic form of government unless the right of the people to change it is recognized, not only by lip service in its preamble, but by an effective, self-implementing provision securing this right without the necessity of legislative action. We therefore recommend the provision of three methods for constitutional revision, in the belief that any document failing to make such provision must necessarily be lacking in the basic essentials of the recognition of the people's right to self-determination. These three provisions are as follows:

1. *The Initiative and Referendum*

The people should have the right, by petition, to secure a referendum with respect both to constitutional amendments and to legislative enactments. Without this, democracy is totally lacking in a state government.

This provision should, of course, to be effective, be self-implementing and automatic, but should require a sufficiently large number of signatures to a petition so as to make it not too easy of accomplishment.

It is suggested that a petition for a referendum on a constitutional amendment require the signatures of ten per cent of the registered voters, and a petition for a legislative provision require the signatures of five per cent of the registered voters. On the basis of present registrations, this would mean that over 200,000 signatures would be required for constitutional amendments, and over 100,000 for legislative changes. We submit that the voices of 200,000 and 100,000 voters, respectively, are entitled to be heard and to be given effect.

2. *Automatic Constitutional Conventions*

There should be a mandatory, self-implementing provision for recurrent constitutional conventions every twenty years. In these

days of frequent economic and social change it is imperative that a thorough review of our Constitution be conducted periodically.

Provision should be made, however, for a non-political, non-partisan selection of delegates. Bracketing of candidates for delegates should be prohibited, since such bracketing places control of such elections in the hands of the political parties. Designations of candidates should not be permitted; or, at least, such designations should not be permitted to refer to political parties. We would thus be assured, at least to a large extent, of a non-political and non-partisan convention.

3. A Simpler Amending Procedure

We submit that constitutional amendments should be submitted to the people at referendum, at the general election next succeeding the approval of the proposed amendment by 60 per cent vote of each house of the Legislature.

LETTER OF NEW JERSEY STATE FEDERATION OF TEACHERS

NEW JERSEY STATE FEDERATION OF TEACHERS
Affiliated with American Federation of Teachers
1025 Broad Street
Newark 2, New Jersey

July 10, 1947.

The Rights and Privileges Committee,
Constitutional Convention,
New Brunswick, New Jersey.

Gentlemen:

The New Jersey State Federation of Teachers wish to express its support of the position taken before your Committee July 9 by Mr. Weidner Titzck when he spoke for the New Jersey Taxpayers Organization to Preserve Separation of Church and State. In 1944, Charles Brodsky of the Federation appeared before the Legislative Subcommittee on Constitutional Revision and asked that the following amendment be added to Article III, Section VI, paragraph 8:

"No grant, appropriation, or use of public money or property, or loan of public credit shall be made or authorized by the Legislature or any political division thereof for the purpose of founding, maintaining, or aiding any school or institution of learning wherein any denominational or sectarian doctrine is taught or inculcated; nor shall sectarian instruction be allowed in the free public schools of this State."

Today we believe more strongly than ever that such a statement should be in our new Constitution and we urge that your Committee approve its inclusion.

Respectfully yours,

ETHEL WORTHINGTON, *Secretary*

PROPOSAL OF
NEW JERSEY STATE FEDERATION
OF TEACHERS

NEW JERSEY STATE FEDERATION OF TEACHERS
1025 Broad Street
Newark 2, New Jersey

July 26, 1947

Mr. John F. Schenk, Chairman,
Committee on Rights, Privileges, etc.,
Constitutional Convention,
New Brunswick, N. J.

Dear Mr. Schenk:

May we convey to you, for purposes of record, the support of this organization of teachers, affiliated with the American Federation of Labor, for Proposal No. 11, introduced by Mr. Glass, concerning the recognition of a contractual relationship for benefits payable by virtue of membership in any state pension or retirement system? We likewise endorse Proposal No. 13, introduced by Mrs. Peterson, concerning the recognition of a contractual relationship for rights and privileges granted public employees under tenure or civil service.¹

Will your Committee consider, if it is not too late, the following as our suggested addition to Article III, Section 6, Clause 8:

"In the school districts of the State, all offices and positions shall be classified according to duties and responsibilities; salary ranges shall be established by the school board of each school district for the various positions. All such salary ranges shall be considered contracts at law, and all promotions from one position to another shall be made according to merit and fitness to be ascertained so far as practicable, by examinations, which, so far as practicable, shall be competitive."

Very truly yours,

BENJAMIN EPSTEIN,
LOIS ST. JOHN SMITH,
Legislative Representatives

¹ These Proposals appear in Volume II of these Proceedings.

LETTER OF NEW JERSEY STATE FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION

Permit us to bring to your attention that the Constitutional Convention of the State of New York in the year 1938 adopted as part of the Constitution of the State of New York a provision forbidding the impairment or diminution of benefits accorded by legally existing statutory pension or retirement systems of the State of New York. See Article V, Section 7 of the Constitution of the State of New York, adopted by Constitutional Convention of 1938 and approved by vote of the people November 8th, 1938.

We respectfully submit that the public employees of New Jersey and of its political subdivisions who are members of existing statutory pension or retirement systems, are entitled to equal consideration at the hands of the people of New Jersey as that which was accorded to the public employees of New York.

We, therefore, respectfully submit and urge your advocacy for inclusion of the following section in the proposed Constitution of New Jersey:

"Membership in any statutory pension or retirement system of the State of New Jersey or of any political subdivision thereof, shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

We feel that the above provision is fair and equitable in all respects and constitutes the consideration to which the public employees in this State are justly deserving.

Respectfully yours,

NEW JERSEY STATE FIREMEN'S MUTUAL
BENEVOLENT ASSOCIATION

JOSEPH H. McNAMARA, *President*

STATEMENT OF THE
NEW JERSEY STATE INDUSTRIAL UNION
COUNCIL, C.I.O., WITH RESPECT TO
AMENDMENT AND REVISION
OF THE CONSTITUTION

The New Jersey State Industrial Union Council is a representative body consisting of delegates elected from trade unions operating within the State of New Jersey, and affiliated with the Congress of Industrial Organizations. Such local unions have a membership of approximately 250,000.

1. THE IMPORTANCE OF THE AMENDATORY PROVISIONS

In the view of the New Jersey State Industrial Union Council there is no single provision of the Constitution which is of greater importance than those which will cover the amendatory and revision processes. It is not too much to say that the reason New Jersey has been cursed with an antiquated Constitution for untold years is that it was impossible, under its amendatory clauses, to remold the Constitution from time to time as required by changing social and economic conditions within the State. With proper amendatory clauses, the substantive provisions of the Constitution may always be subject to correction and change when necessary; without a proper amendatory clause, the substantive provisions of the Constitution are virtually frozen, bad with good.

The opposition of this organization to the adoption of the proposed Constitution in 1944 was arrived at only after a careful weighing of the advances made by that Constitution as against the defects contained in the Constitution; and, in the final analysis, it was the absence of a reasonably flexible and useable clause that determined the C.I.O.'s opposition. This point was emphatically stressed by Morris Isserman, counsel for the State C.I.O., in numerous public addresses throughout the State prior to the November 1944 election.

Again, it is very likely that the provisions governing the amendatory and revision processes will prove to be the controlling factor in determining the C.I.O.'s position on the Constitution which will be put before the people by this Convention. If those provisions are reasonably flexible and provide for periodic revision, then it will be possible to overlook other defects which may appear in the Constitution; but if the proposed Constitution will prove as rigid and unyielding to changing conditions as was and is our present Constitution, then whatever defects the C.I.O. might find in the proposed Constitution will loom extra large, and may force C.I.O. opposition

to its adoption. For these reasons, the C.I.O. urges upon this Committee and the Convention the adoption of amendatory and revision clauses which are reasonably flexible and make it possible for the Constitution to keep pace with changing times and requirements. We must not think that this generation is the repository of all wisdom and we must so devise the Constitution that future generations are not barred from making changes which they think desirable and necessary.

2. OBJECTIONS TO THE PRESENT AMENDATORY CLAUSE

The present amendatory clause of the Constitution has three serious defects:

A. The first defect is the requirement that a proposed amendment be adopted by two successive legislative sessions. We fail to find any need whatever for such a rigid provision. Surely the concurrence of both Houses of the Legislature, the Governor and the people, is a sufficient safeguard against hasty and unwise amendment. The provision for adoption by two successive sessions has proven in practice over the years to be not so much a safeguard against hasty amendment as a complete bar to all amendment, regardless of merit.

B. We also find that the requirement that amendments be submitted at special election is unwise and unnecessary. The argument made for this provision is that it will separate proposed amendments from the political partisanship attendant upon the election of officers. We do not think there is any validity to this point. Where amendments are of political nature, political views will be taken and expressed upon it whether they be voted on at a special or general election. Nor would we have it otherwise, since American democracy functions through the organization and expressions of political parties. If the amendment is one of a bi-partisan nature, then the fact that it is voted upon at a general election will not prevent necessary bi-partisan agreement. The only real effect of requiring special elections for amendment is to reduce popular interest and popular vote on the proposed amendment. This is a condition which is surely a far greater danger to the proper functioning of democracy than the expression of political views upon a proposed amendment.

A second, and while an important reason not a principal objection to special election, is the cost thereof. It has been estimated that a special election will cost approximately \$700,000, while the additional cost of separate balloting upon an amendment at a general election is comparatively minute. There is no reason for the unnecessary expenditure of such large sums.

C. The third provision to which the C.I.O. objects is that requiring a lapse of five years between submission of amendments to the people. We find no justification whatever for such a provision. The

people should be free to pass upon a proposed amendment at any time necessary preliminary support, either legislative or popular, can be obtained. This provision, again, is not one which reasonably safeguards the amendatory process, but rather is one which operates to prevent necessary and desirable amendment. It cannot be said that in any case where the Legislature and Governor have accepted a proposed amendment as desirable to submit to the people, or a requisite number of citizens have through petition indicated the same, that the people should not be permitted to pass upon it merely because the question has been defeated at some time within the five years past.

3. PROPOSALS

The New Jersey State Industrial Union Council believes that two proposals are requisite to a reasonably flexible and proper amendatory clause. They are:

A. Submission of any proposed amendment to the people at general elections that has been passed by a simple majority in both Houses of the Legislature at one session and signed by the Governor, or if rejected by the Governor, re-passed by two-thirds (or three-fifths) of both Houses at one session over a veto.

B. Submission to the people at a general election at least once in every 20 years, of a proposal calling for a constitutional convention to be convened to examine and generally revise the Constitution, or the calling of such constitutional convention at any time when both Houses of the Legislature and the Governor concur in the necessity for the convening of such a constitutional convention.

The first of these proposals is essential so that particular amendments required to cure particular defects of the Constitution which may be revealed by the passage of time or changing conditions may be adopted when necessary. The necessary concurrence of the majority of both Houses of the Legislature and the Governor, or both Houses of the Legislature by two-thirds (or three-fifths) vote, is a reasonable safeguard against hasty and ill-considered amendment. Any greater requirement, either by way of passage at successive Legislatures or by way of requirement of more than a simple democratic majority, will constitute a rigid and undemocratic bar to the exercise of the will of the people, which the C.I.O. must vigorously oppose.

Whereas the first essential requirement deals with particular amendments to cure particular defects, the second essential requirement permits the people to take stock of changing and developing conditions at least once every 20 years, and determining whether the passage of time and changing conditions require a general revision of the Constitution. Under this proposal it is not, of course, essential that a constitutional convention be held every 20 years. All that

is required is that the people have the opportunity to say, at least once every 20 years, whether such a convention is necessary. Such a provision, which is found in the constitutions of 33 states of the Union, and which has secured unanimous support from all civic and social organizations, as well as past Governors of the State, is essential to insure that the New Jersey Constitution does not again fall hopelessly behind the times. It may be said that general revision can be taken care of by a sufficiently flexible amendatory provision, such as is proposed in the first point. We do not think that this is so. Amendments must be proposed and voted upon separately, and machinery adequate for the adoption of specific amendments is entirely inadequate to cope with a need for general revision.

The New Jersey State Industrial Union Council reiterates that both points A and B are, in its opinion, the minimum requirement for an acceptable amendatory provision.

In addition to the above two points, the C.I.O. believes it desirable to incorporate two additional possible methods of constitutional amendment:

A. Just as the Legislature may, by re-passage of proposed amendment over gubernatorial veto, submit a proposed amendment to the people at general elections, so we urge that the Governor may cause to be submitted to the people at general election any proposed amendment which is passed by one House of the Legislature but defeated in the other. This proposal will make it possible to submit to the people any proposed amendment which is concurred in by any two of three of the participating branches of the government; that is, the two Houses of the Legislature and the Governor. The C.I.O. believes that this proposal is peculiarly apt to the situation obtaining in New Jersey where 11 Senators from small counties in a 21-man Senate may be sufficient to prevent submission to the people of an amendment which has the overwhelming support of the people of the State generally, and of the Legislature and the Governor in particular. Such a provision is made necessary by the continuance of the present undemocratic legislative structure guaranteed by the terms of reference of this Convention.

B. The C.I.O. further believes that it is a proper and desirable exercise of democracy to permit the people themselves to initiate a proposed amendment. In any case where a very substantial support for a proposed amendment is manifested by the signatures upon a proper petition of 100,000 qualified electors, of whom 1,000 shall be from each of a majority of the counties within the State, the people as a whole should have a right to pass upon the necessity and desirability of such an amendment. Accordingly, the C.I.O. proposes the following section to be incorporated in the Amendment Article of the Constitution:

"The people themselves by petition may propose amendments to this Constitution. Such petitions shall bear the names and postoffice addresses of 12 sponsors, and be signed by at least 100,000 qualified electors, of whom 1,000 shall be from each of the majority of the counties of the State. Each petition shall propose only one amendment and shall contain the full text of the proposed amendment. The form and attestation of such petition may be prescribed by the Legislature.

Such petitions must be filed with the Secretary of State at least one year prior to the general election at which the petition proposes submission of the proposed amendment to the people, with at least 10,000 attested signatures of electors who place their signatures thereon within one year prior to the filing thereof. The additional signatures necessary to reach 100,000 signatures with 1,000 from each of a majority of the counties may be filed at any time prior to 90 days before the said general election. Upon first receiving such petition the Secretary of State shall verify it, publish the proposed amendment and transmit certified copies thereof to the Governor and to the presiding officer of each House of the Legislature, and arrange for at least one public hearing. If additional petitions with the requisite signatures have been filed within the time above prescribed, the proposed amendment shall be submitted to the people at the next general election.

Any such amendment approved by a majority of the qualified electors voting thereon, shall become effective 30 days after the date of election, unless a different effective date is provided in the amendment.

If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each separately and distinctly.

The provisions of this section shall be self-executing but the Legislature shall appropriate money and may enact legislation to facilitate its operation."

NEW JERSEY STATE INDUSTRIAL UNION COUNCIL,

By CARL HOLDERMAN, *President*

ISSERMAN, ISSERMAN & KAPELSOHN

By IRVING LEUCHTER.

Dated, July 3, 1947.

PROPOSAL OF
NEW JERSEY TAXPAYERS ASSOCIATION
ON PUBLIC RECORDS

July 21, 1947.

To the Constitution Convention:

I have been instructed to communicate the views of this Association in the attached matter which we understand to be under consideration by your Committee of the Constitution Convention.

We shall be happy to be recorded as wishing to present our views in this matter at any public hearing which may be given this subject either prior to or following the July 31 deadline for submission of the report of the Standing Committees.

Respectfully submitted,

A. R. EVERSON, *Executive Vice-President*

PUBLIC RECORDS

The inherent right of citizens to examine public records is not always recognized by officials having charge of those records. Because of the lack of a written guarantee, it sometimes becomes necessary for citizens to go through a discouraging, time-consuming and costly process to secure access to records which should be readily available to them. The State Constitution should provide the written guarantee of the right of citizens to examine any record of government which is not specifically closed off from public scrutiny by legislative enactment.

STATEMENT OF THE NEW JERSEY WOMEN'S GOVERNMENT STUDY COUNCIL

The Bill of Rights is the foundation of any constitution for democratic government. The strength of the Bill of Rights, therefore, determines the strength of the entire document. The Bill of Rights in our present New Jersey Constitution is sound of intent, but the broad outlines of public policy in some paragraphs allow for weakness and abuse. Paragraphs listed below are suggested for strengthening by rewording, rephrasing, or additions. Such changes are underlined [*italicized*]:

Paragraph 1.

All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, *working at any trade, craft or profession he is by talents or education fitted*, acquiring, possessing and protecting property, and *of pursuing and obtaining security and peace. To these ends no person shall be denied opportunity because of race, color or creed.*

Paragraph 5.

Every person may speak freely, write and publish *his or her* sentiments on all subjects *not designed to divide the people and corrupt their faith in the ideals of democracy. Where such is evident, the penalty of the law shall be invoked, the individual or individuals being responsible for the abuse of such, but no direct law shall be passed to restrain or abridge the liberty of speech or of the press.*

Paragraph 14.

Treason against the State shall consist of *plotting war against it, adhering to its enemies, granting them financial assistance, shelter, or moral support.* No person shall be convicted of treason, unless on the *sworn* testimony of two *or more* witnesses to the overt act, or on confession in open court.

Explanation:

The activities of the Nazis and the Communists in recent years make it necessary to strengthen paragraphs 5 and 14, since New Jersey was caught in the grip of the Bund movement to an alarming degree.

Paragraph 16.

Private property may not be taken for public use without just compensation *being granted, but such properties as may be deemed necessary to the State for the greatest public good may be held in custody by the State, pending the granting of compensation by the Legislature, with that body being mindful of using such time in the*

granting of compensation as to work no undue hardships upon the person or persons to whom such compensation is due. Private corporations shall not possess any property before compensation is granted to the owners. Such compensation must be just. Private property may be acquired, occupied and maintained by any person in the State, wherever such person may desire, providing such person is willing and able to maintain values as set forth in the locality, to include both property assessments and civic standards, regardless of race, color or creed.

Paragraph 18.

The people shall have the right to freely assemble together, to consult for the common good, and to make known their opinions to their representatives, and to petition for redress of grievances. *Any man or woman elected to federal office by the people of New Jersey is duty bound to adhere to the provisions of the Constitution of New Jersey in all deliberations of federal legislation, being ever mindful of the welfare of the people for whom he speaks, acts, or fails to act, and failure to give full consideration to petitions for redress or grievances to a majority shall constitute a violation of the constitutional rights of the people and render such representative subject to recall at the will of the people. Workers in all categories, directly or indirectly responsible for the common welfare of the State, shall have the right to organize for the best interest of themselves and the work in which they are engaged. They shall have the right to bargain collectively through representatives of their own will and choosing, with demands adjusted as fair, retroactive as of the opening of negotiation, not to exceed one calendar year. Should work be suspended by the workers during negotiations, retroactive pay shall decrease two per cent, payable to the State. Should work be suspended by the employers, retroactive pay is increased two per cent, the increased amount payable to the State. Should there be no stoppage of work, no percentage can be deducted from the retroactive pay by the State.*

MISCELLANEOUS

GAMBLING

When the Constitution of New Jersey was first drawn, gambling constituted a major item of reckless recreation. Today it has become so interwoven into the pattern of American activities that to attempt to outlaw it, or confine it to one major activity, seriously endangers the first paragraph of the Bill of Rights. Everyone with an urge to engage in chance doesn't seek the antics of horses. Has that person who is allergic to horses the right to chance his or her two dollars on a number, printed on a piece of cardboard? Is it any less legal to yell "Bingo" than to yell "Nimble Toes wins"? It

is a part of a man's make-up to take chances, whether on his life on the battlefield in a gamble for greater stakes in living, at the polls on his reputation, in a gamble for greater prestige, or the payment of a small sum in the hopes of gaining a larger sum. Remove every opportunity of exercising this pursuit of happiness and you destroy the spark of life. Make it a part of the restrictions in the Constitution, and all other human inclinations must also be listed. It would seem that much that should be done through moral suasion by those who have accepted the responsibility of spiritual leadership is being thrust into the maw of legislative action. Let's render unto Caesar the things that are Caesars, and unto God the things which are of the conscience.

If control is necessary, all churches, clubs, veteran organizations, etc., of non-profit nature wishing to run individual raffles should be able to obtain registration blanks from their local police departments, issued by the State. These blanks would cause the promoters to be listed, and thus responsible for fraud, and the gross intake listed, taxable at 3% by the State, payable not later than one week following the close of the raffle, at the police department, to be collected by the same state agency responsible for pari-mutuel funds.

EDUCATION

Article III, Section VI, paragraph 7. Addition:

The State Board of Education shall have the right to request the use of any building or property in any municipality designated as a free public school, and receiving state funds, providing such use is in keeping with the general program and existing facilities of the building or property, and does not in any way proven, impair the services to the community, or endanger health or safety of facilities.

Mrs. Leonora B. Willette

137 Stephen Street,
Belleville, New Jersey

LETTER OF THE ORGANIZED WOMEN
LEGISLATORS OF NEW JERSEY

ORGANIZED WOMEN LEGISLATORS OF NEW JERSEY
"THE OWLS"

June 30, 1947

Hon. John F. Schenk,
Chairman, Rights and Privileges Committee

Dear Sir:

At a meeting of the Organized Women Legislators held in Newark on June 28, 1947, the following action was taken:

"Resolved, that the Organized Women Legislators endorse the report of the Committee to Study the Status of Women of the New Jersey Bar Association."

We are in accord with the sentiments as set forth in the report and are hopeful that they will be embodied in the new Constitution.

Very sincerely yours,

MAY M. CARTY

Secretary

LETTER OF ARTHUR N. PIERSON

July 7, 1947.

Hon. John F. Schenk,
Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

My dear Schenk:

Noticed by the paper that your Rights, Privileges and Amendments Committee had been petitioned to provide for constitutional amendments by petition. I sincerely hope your Committee will not include such a privilege.

I recall, back in 1918 when I was Chairman of the Judiciary Committee in the Assembly, which was about the time that the agitation was abroad for just this feature, and while I do not quite recall whether a resolution was presented and referred to my committee or whether it was that some member of the Assembly had pressed me for action for this purpose, in all events, I then recalled that California had adopted such a feature and I communicated with the Secretary of State of California for a copy of their constitutional amendment and as well any material that would guide our Legislature in consideration of a like provision for our Constitution.

I do recall very clearly that I received from California a printed pamphlet of some twenty or thirty pages containing some forty or fifty amendments that had been proposed by petition, many of which were illy considered and the majority entirely bad material for constitutional text.

The Secretary of State's letter said that the only amendment adopted out of the whole number was one which certain vested interests had been trying to get the Legislature to propose as a constitutional amendment for the last twelve or fifteen years, without success, and inasmuch as only a small percentage of the voters (as I recall it, only ten or twelve percent) voted for any of the amendments and at that time, the Secretary said that there was a very determined movement for a repeal of this amendment and he believed it would be presented at the coming legislative session and, as I recall it, such was presented and approved by an overwhelming majority.

However, I feel sure that such a feature in a new Constitution would be entirely bad and I hope your Committee will turn it down, as I am sure it would prove most unsatisfactory.

Yours truly,

ARTHUR N. PIERSON

PROPOSAL OF
PRESBYTERY OF MORRIS AND ORANGE

PRESBYTERY OF MORRIS AND ORANGE

HENRY A. PEARCE

Stated Clerk and Treasurer

55 William Street

West Orange, New Jersey

June 19, 1947

Mr. Oliver Van Camp, Secretary,
N. J. State Convention on the Revision
of the State Constitution,
Rutgers University,
New Brunswick, N. J.

Dear Sir:

At the summer meeting of the Presbytery of Morris and Orange held at Dover, N. J., on Tuesday, June 17, 1947 the following resolution was passed unanimously and I was instructed to send a copy of same to you for presentation to the Convention:

“RESOLVED, that the Presbytery of Morris and Orange earnestly urge the New Jersey State Convention on the revision of the State Constitution, now in session, to state in clear-cut and unmistakable language: first, the historic American principle of the separation of Church and the State; and, second, the principle that the funds of the State and its subdivisions shall not be used for the support of private or parochial schools.”

It is our earnest wish that you will give this statement very careful consideration.

Yours very truly,

HENRY A. PEARCE

LETTER OF HERBERT QUITTNER, Esq.

649 Chancellor
Irvington 11, N. J.
July 26, 1947

Bill of Rights Committee
Constitutional Convention
Rutgers University
New Brunswick, N. J.

Gentlemen:

I am writing this letter to you requesting that you consider the following suggestion which I think would be a great step forward by the State of New Jersey:

I think that the new Bill of Rights should include this right:

New Jersey licenses to practice any trade, profession or occupation for gain shall be granted or withheld only by State of New Jersey employees. This power shall never be delegated to or exercised by any private individual or organization.

Since the C.P.A. Board is a private organization I think that the State should take over all the duties of this board and that all responsibilities should be borne by the State rather than any private individuals. In this way the State will give all examinations, grade all examinations, and on this basis will grant all C.P.A. certificates.

I am quite sure that there are many other public accountants who share my views on the above matter. I hope that you will give this matter your every consideration.

Very truly,

HERBERT QUITTNER,
Public Accountant

MEMORANDUM OF J. B. R. SMITH ON RIGHTS AND PRIVILEGES

The first Article of the present Constitution which, as written, if suggestions heretofore made relating to inclusion of statements regarding substance, purposes, and relation of individuals and peoples to the limited state are adopted, naturally will become the second Article. This Article is entitled "Rights and Privileges." It popularly has been called the "Bill of Rights." Our Constitution—constitutions generally—include catalogues of specific items which are called "Bills of Rights." In civilization as at present developed, it seems needful to do so. Such a schedule was promised the electorate as a consideration apparently necessary to secure the adoption of the Federal Constitution. And the promise was fulfilled. Yet its framers not only had regarded it unnecessary, but in actual derogation of the end sought, as many words usually are, and as the Governor so ably advised the present Convention. Bills of Rights as we understand them, and use them, indeed, usually do result in some measure of derogation of that inherent personal freedom and sovereignty which we assert to be our birthright, and which we are seeking to make more clearly understood in the present Constitution. Alexander Hamilton, whose reason and whose will did more to secure adoption of that Constitution than any other single person, and who assented to the promises for strategic reasons, opposed it in principle. At the risk of consuming much time it seems well to quote him as briefly as may be. Among other things in the 84th number of the *Federalist*, he said:

"It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such was the subsequent confirmations of that charter by succeeding princes. Such was the Petition of Right assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive significance they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. "WE, THE PEOPLE of the United States, to secure the blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of right, and which would sound much better in a treatise of ethics than in a constitution of government. * * *

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the pro-

posed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is not power to do?"

Is it not clear that the demand for such bills emanate from those who have not clearly in their minds the American conception of the source and the nature of human freedom, of personal sovereignty, of the limited nature of the state—the things for which we contended in our earlier communication—and which distinguishes Americans from all other people, and their states from all other states, even those of freedom loving Englishman, who still regard human rights as political grants. Doubtless it was that lack of clear thinking which called for the Bill of Rights as amendments to the Federal Constitution and for their inclusion in our own and in other state constitutions, which led Hamilton and his associates to accept them as politically expedient; and it is that which now leads us not to oppose them here. This much only for the sake of the record regarding our position.

Yet we are so thoroughly convinced that because of their specific natures they tend to obscure and to restrict in the popular mind conceptions of the universality of our inherent freedom and personal sovereignty that we now suggest that our present enumeration of the specific rights shall be preceded by a general statement of the true nature of "right" and of "rights"; and the form of such a statement is important. Immanuel Kant summarized his conceptions of right in the following sentence: "Right, therefore, comprehends the whole of the conditions under which the voluntary actions of any one person can be harmonized in reality with the voluntary actions of every other person, according to a universal Law of Freedom." Herbert Spencer was of a substantially similar opinion, though arrived at through rational processes entirely independent of those of Kant, and from quite different premises, Spencer regarding freedom the positive, or dominant element, obligation the negative element, whereas the argument accompanying the Kantian definition seems to imply reversal of this relationship.

To us, however, the most important word in the Kantian definition, and one which Spencer overlooked, is "harmonized." "Harmony," it seems to us, is the "touchstone" to all true progress and it will be observed that in our previous suggestions we not only attempted to consolidate the thoughts of Kant and Spencer, but have made "harmony" the basic element. It is "harmony" which makes for progress—material, vital, moral, social, or spiritual. Political constitutions, as all things else, may be made, and their ends achieved, only to the extent that harmony prevails. Perfection is attained through harmonious process; destruction, through its negation.

May not, then, our new Constitution reflect these new ideas both in its substance and in its form, and without doing violence to the expression of specific rights contained in our present Constitution, by inserting at the beginning of the Article an expression of "general rights" in some such language as the following:

"Personal rights, whether inherent or contract, being of divine origin are attached only to the individual sovereign possessing them. It is beyond the lawful power of the state, to restrain or limit them; it being the primary duty of the state at all times and in all possible ways to defend and to protect them, and to promote harmonious relations between individuals. The origin of these rights heretofore having been expressed, it seems fitting that some of the more common specific ones also should be expressed, not in derogation of any personal right not so included, but in illustration of all others not here stated."

The next suggestion regarding changes is the elimination of the word "privileges," both in the title and in the context. As will be observed in our memoranda included in the "Report of Proceedings of the Legislative Committee of 1942," we argue earnestly for the deletion of the word as having no place in the vocabulary of a state of free people. Such a state possesses no "privileges" to confer. "Privileges," if they may be so regarded, move from the sovereign individuals to the limited state, not in the opposite direction. Is it not almost profane in such a charter to speak of privileges as something akin to rights? It seems simply a survival of despotic thought. In the third section of the Article the word "rights" should be substituted; in the eleventh section the word should be deleted as unnecessary; and in the twenty-first section the word should be deleted and the section recast to conform to the spirit of these suggestions, perhaps by substituting for the last six words the following, "usurp others belonging to the people."

Furthermore, and finally, much of that which is contained in this Article relates to "powers"—powers of sovereign citizens and powers conferred by them upon the corporate state. This is another subject upon which popular understanding still seems almost inchoate. There is not time either here or for the delegates to your Convention to give the serious thought it merits. But may not a definite step in that direction be taken by substituting "powers" for "privileges" in the title of the Article, and perhaps re-phrasing some of the provisions in conformity therewith?

July 5, 1947.

MEMORANDUM OF J. B. R. SMITH ON THE RIGHT OF SUFFRAGE

It long has seemed that the second Article well might be renamed and rewritten. If any part of the present Constitution, aside from the Judiciary Article, can be regarded truly obsolescent this would appear to be the one. First, regarding the title, "Right of Suffrage." What is meant by suffrage? At best it is an ambiguous word, of uncertain origin. To some it implies superiority, to others privilege. To some it is thought to originate in the broken pieces of pottery or other substances which were then used as ballots. To others it was believed to be the name given to those entitled vocally to exclaim their choice. But whatever its origin or nature, its purpose seems better expressed by the word "elector." As electors we participate in all corporate management, whether the corporation be a political state, or an economic, religious or other private organization. We suggest that the title be made both more comprehensive and more accurately descriptive, making it include "Citizenship, Residence, the Electorate."

Second, what is meant by "right" of suffrage? We talk eloquently about the "right" to vote and then proceed to prevent many worthy people from voting, and admit many unworthy ones. Already in the letter of the Agricultural Society now before you, it seemed conclusively shown that there is not now and never can be, among societies of free people, a "right" in voting. That which has been created is a "duty," a "trust," a "fiduciary obligation." If this fact could be made clear to the public, going to the roots as it does of all corporate life, whether political or private, efforts to provide a purer corporate society would be much more effectual. What would do more to attain this end than clearly to express the idea in this Constitution?

Third, it seems that the present Constitution, in an unfortunate manner, regards "citizenship," the "electorate" and "residence" at least *quasi*-synonymous, while the fact is, each word expresses a distinct and only partially related idea. "Citizen" is defined in the Fourteenth Amendment to the Federal Constitution and has been made binding upon all states. The particular classes or groups of citizens whose members have been designated as electors are enumerated in the Article, but it fails to indicate the reason why they were included and why other citizens were excluded, which in such a case it seems desirable that the public should know, particularly if the suggestions previously made in the memorandum of the agriculturalists regarding qualifications of the elector are to be adopted.

And finally, all qualifications are based on residence, without defining what is meant by that word as here used.

This, indeed, would not be serious had there been a common understanding of that which is necessary to constitute residence. But upon this courts have been divided between two basic principles: intent of the citizen, and actual domicile, or even home. Should citizens possess the power to determine the place they desire to regard their legal abode, or must it be determined by circumstances often beyond their control, which makes necessary their stay for long periods in other places? There is, of course, argument for both principles. Either one or the other should be adopted in an authoritative way. Or, may it not be determined through the development of the principle of permanent registration? Let it be a condition precedent to voting, that upon attaining voting age or naturalization every citizen should personally and publically register his choice of a voting domicile and then receive a duly certified voting certificate which thereafter should not be changed except through proper certification of a desire and of corresponding revision of registration records. This, it seems, with proper legislation relating to registration of citizens coming from other states and for purging the records of removals and of deaths, would result in less complicated and purer voting lists than before known, and at the same time would afford to citizens domiciled in the District of Columbia an opportunity now denied them.

Fourth, there is the antiquated schedule of qualifications for voting. Consider first, in these days of rapid communication, whether residence for one year should be required. Its effect almost always is to prevent a citizen from voting the year he changes residence from another state. All the time needful is that necessary to determine the facts necessary for qualification. Second, why should paupers be excluded? Paupers, as generally defined, are those supported by public expense. If and when enforced this provision excludes many worthy and competent persons. Their only offense is poverty, and property as a qualification for the electorate was abolished long ago. Happily, others have presented similar views on this subject. Third, regarding the exclusion of persons convicted of crime which at the time of the adoption of the Constitution excluded them from being witnesses. This list of crimes included blasphemy and larceny of the sum of six dollars, but did not include certain other crimes, especially embezzlement. That is, if one had been convicted of profanity or stealing outright six dollars he could be excluded, but if convicted of embezzling even millions he still could vote after the expiration of the sentence. Furthermore, the statute relating to the exclusion of witnesses itself was repealed in 1874. Do not all agree that this clause needs rewording? Whether

the exclusion provision should be made more or less severe, no doubt opinions will differ, and none here is expressed. It is suggested, however, that parole and probation, rather than pardon, should be made the basis for removing the exclusions—if it is not decided to eliminate the clause.

We now reach the disqualification for the electorate not yet enumerated, which was considered in our earlier memorandum, and which should be regarded of paramount importance. It is the disqualification of all citizens who are opposed to our conceptions of freedom, of liberty, of rights and of justice, to our ideas of a limited state or to the form of its government. To repeat what was there said, so long as such persons perform the services of citizens they are entitled to the personal protection our laws and our State afford, but they are not entitled to and in all conscience as honest men they should not desire to participate in the management of the State or this government. As before said, as well admit rivals to the electorate or the management of our business corporations, or atheists to that of our religious corporations. Furthermore, if control of our political states and municipalities were withdrawn from our citizens of alien thought, little more of subversive social influences among us would be heard. The proper language for use in this case is, indeed, difficult to prepare. Several drafts have been made. It is needful, of course, not to be too vague or too inflexible, nor yet too blunt or too conciliatory. This memorandum already is too long and presentment of the several ideas or drafts will not be undertaken here. If and when, however, your Committee desires to consider further this matter and desires our cooperation we shall gladly present our thoughts in any manner convenient to the Committee.

July 5, 1947.

STATEMENT OF THE
REV. FRANK BATEMAN STANGER, S.T.D.¹

Mr. Chairman, and Members of the Committee:

I speak to you, first of all, as a life-long citizen of the State of New Jersey. This is the State that has always been "home" to me; it is in the welfare of this State that I have always been interested; and it is with the future material well-being and the moral and spiritual prosperity of this State that I am profoundly concerned.

I speak to you, also, as the representative of several Christian groups. I speak for the Camden County Ministerial Association, which includes the ministers of most of the Protestant Churches of Camden County; for the Provisional Council of Churches of Greater Camden, which is also a Protestant interdenominational group of ministers and laymen; for the Camden Methodist Missionary Society, which is responsible for the development of all Methodist work within the city of Camden and vicinity; for the Methodist Summer Assembly, an incorporated institution which for the past 16 years has been training large numbers of youth for respectable and useful Christian citizenship; and for The Sunday League, Inc., a state-wide, interdenominational group interested in public morals.

In other words, I speak as a representative of the Christian Church. And may I reiterate the fact that the Christian Church has a moral right to be heard. The Christian Church, following in the holy succession from the ancient Hebrew prophets, has always been the conscience of society and civilization. Democracy is related indissolubly to the Christian faith. The American Republic was founded on Christian principles. The very provisions of Article I of the Constitution of New Jersey, which is being considered today, show the unmistakable influence of moral and spiritual ideals.

And everywhere in this world marked by strife, confusion and chaos, men of intelligence and prudence are crying out for the rebirth of a spiritual faith and for the reconstruction of moral standards in order to save contemporary civilization from crossing its cosmic deadline.

The Christian Church remains as "salt" to save from moral meaninglessness and deterioration those who desire to be spared. The Church continues to be the "light of the world" to those who wish to be guided out of the universal darkness and who will walk in the light of its moral and spiritual rays.

Here, then, are the recommendations that I wish to present to this Committee:

¹ Rev. Stanger presented only part of this statement when he appeared before the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions on July 9, 1947.

1. We recommend the absolute separation of Church and State in all matters relating to the public education of children and youth. Section 3 of Article I of the Constitution of New Jersey says, in part: "No person shall be * * * obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform." And yet, in some places in New Jersey today, the tax money of citizens is taken to help defray certain expenses of sectarian religious education.

We petition this group to re-write this section within the Article on "Rights and Privileges" so clearly and so carefully that never in the future can any subsequent legislation be construed to include the use of public tax money for sectarian religious education.

2. We recommend that Section 4 of Article I of the Constitution of New Jersey be enlarged to include that "no person shall be denied the enjoyment of any civil right merely on account of his religious principles or *his racial differences*."

Democracy is based on the principle expressed in Section 1 of Article I of the Constitution of New Jersey: "All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

Yet democracy, to be democratic, must be consistent. And who can forget oft-repeated instances of racial inequalities and injustices within the borders of our State in recent years?

We submit that the Constitution of New Jersey should protect all the civil rights—"enjoying and defending life and liberty; acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness"—of all the citizens of the State, irrespective of their racial differences.

3. We oppose legalized gambling in any form within the State of New Jersey. We oppose the establishment of lotteries, the buying and selling of lottery tickets, pari-mutuel betting, pool-selling, book-making, bingo, games of chance, or gambling of any kind.

Herbert Spencer has well defined gambling in these words: "Gambling is, first, gain without merit, and, secondly, gain through another's loss."

Gambling is a social evil. It exchanges a universe of law and order, of cause and effect, for one of luck and chance. It encourages an anti-social goal for human living—to despoil one's fellow-man rather than to contribute to his well-being. It is a temptation to extravagant and wasteful living, and it results in a mental condition

not fully alert to the values of life.

Gambling is a direct violation of the principle of respect for property. There are only three morally-justified ways of getting money from another: the law of exchange, in bartering; the law of labor, in industry; the law of love, in giving. All other ways must be classified as stealing.

Gambling has serious social consequences. It diverts funds from legitimate business. It reduces industrial efficiency by decreasing the power of human mental concentration. It results in the impoverishment of families and consequently in a lower standard of living. It fosters the spirit of selfishness and greed. Disraeli, the British statesman of a former generation, called gambling a vast engine of national demoralization.

The State of Texas had pari-mutuel betting for several years until 1937, when a bill was introduced in the State Legislature repealing the law. After listening to arguments against the repeal, Governor James V. Allred said:

“. . . We ought to be ashamed of an argument so weak and so shallow. If we are to accept tribute from an evil which all concede is bad, then let us legalize all forms of vice. Texas does not need gambling revenue. The State ought not to set up a 'skin game' for part of the take. . .”

These, then, are the recommendations that we present to you: (1) The absolute separation of Church and State in all matters relating to public education; (2) the guarantee of civil rights to all, irrespective of religion or race; (3) the making illegal of all forms of gambling.

In conclusion, may I remind you again of the serious responsibility that is yours as you aid in the revision of the Constitution of New Jersey. You have been elected by the citizens of your respective counties to perform this task in the way that your enlightened reason, your moral insight, and your practical vision deem best. You are representatives of the people charged with the obligations of improving the present and of guaranteeing the future. You are those who must write into the basic charter of our State those principles that make for moral and spiritual prosperity, those precepts which result in just and progressive government, and those ideals which will beckon future generations of citizens onward to sacrificial service and heroic devotion in the worthy conquests of true civilization.

May the blessings of God rest upon you, and His Spirit guide you, in the performance of your tasks!

Respectfully submitted,

FRANK BATEMAN STANGER
Minister, The First Methodist Church
Haddon Heights, N. J.

July 9, 1947.

PROPOSAL OF THE STATE COUNCIL
AGAINST DISCRIMINATION

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
DIVISION AGAINST DISCRIMINATION
Newark

The State Council Against Discrimination makes the following recommendation to the Constitutional Convention:

That there shall be included in the new Constitution a section of the same or similar substance as contained in the New York State Constitution, which reads as follows:

“No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by this State or any agency or subdivision of the state.”

July 3, 1947

LETTER OF THE STATE FEDERATION OF
DISTRICT BOARDS OF EDUCATION
OF NEW JERSEY

July 18, 1947.

Honorable John Schenk,
Chairman of Committee on Privileges,
Amendments and Miscellaneous Provisions,
Flemington, New Jersey.

Dear Mr. Schenk:

You will recall that I spoke to you on Tuesday last, while in New Brunswick, with regard to the Bill of Rights and Privileges in the present Constitution.

The State Federation of District Boards of Education appointed a committee on June 6th to study the question of proposed changes in the new Constitution which might affect education. After a thorough study, the committee has reached the conclusion that it would be unwise to change the present Bill of Rights, and we, therefore, recommend that the new Constitution incorporate the present Bill of Rights.

I trust you will bring this recommendation before your Committee at the proper time.

Very sincerely yours,

EDWARD W. KILPATRICK, *Secretary*

LETTER OF UNITED OFFICE AND
PROFESSIONAL WORKERS OF AMERICA, C.I.O.

INSURANCE AGENTS' LOCAL No. 84

July 9, 1947.

Dear Sir:

The members of Local 84 have been fully acquainted with the proceedings and proposals for the new Constitution for the State of New Jersey.

We, in common with other C.I.O. affiliates, are most desirous of seeing the following proposals incorporated in the new Constitution:

1. Including in the new Bill of Rights provisions barring discrimination *in any form* and guaranteeing labor's right to organize and bargain collectively.
2. Making it easier to change the Constitution in the future.
3. That the right of labor to organize and bargain collectively shall not be impaired.
4. No person may be subjected by any governmental body, private individual, group or institution to discrimination because of his race, color, religion or national origin. The civil rights protected by this clause include the right to be free from discrimination in obtaining employment, education, public accommodations, acquiring or enjoying property and others.
5. Property taken over by the State for any purpose, including housing, "shall be enjoyed without discrimination."
6. Tax exemption shall be denied to any charitable or educational institution, except religious or sectarian institutions, which practice discrimination.

We further endorse the following:

1. The people should be able to initiate amendments. Where 100,000 voters in the State, including at least 1,000 from each of any 11 counties, sign a petition urging an amendment, the proposed amendment should be submitted to a vote of all the people at the next general election.
2. Amendments adopted by both Houses of the Legislature at one session should be submitted to a vote at the next general election.
3. A proposed constitutional amendment approved by only one House of the Legislature (and not the other) should be submitted to the people, if so ordered by the Governor.
4. The question of revising the entire Constitution should be submitted to the people every 20 years.

Very truly yours,

A. SCOTT WILLIAMS, *President*

RESOLUTION OF THE URBAN COLORED POPULATION COMMISSION

WHEREAS, the legislated authority and the intense interest of the Urban Colored Population Commission since 1938 have been the improvement of the economic, cultural, health and general living conditions of New Jersey's Negro population with an ultimate goal of securing for the Negro population full, integrated participation and enjoyment of all the rights, privileges, and benefits of democratic citizenship without discrimination, solely because of race, creed or color in order to secure to the urban colored population equal opportunity with the general population thereof for self-support and the economic and cultural development to the extent, if any, that such opportunity does not now exist; and

WHEREAS, conclusions based upon intensive studies by this Commission indicate clearly the pressing need of a change in the present antiquated State Constitution; and

WHEREAS, members of this Commission agree that one of the most pressing needs to protect the equality of opportunity for the social, economical and political development of its colored citizenry is the enactment of a forceful declaration in the Bill of Rights of the proposed new Constitution, exemplifying New Jersey democracy and the true expression of Christianity, according to the Mosaic law and ancient philosophies practiced by the pioneers of this State characteristically demonstrated; and

WHEREAS, this Commission, in cooperation with allied organizations and counselled by legal authorities, has conferred on this resolution;

BE IT THEREFORE RESOLVED, that we do hereby respectfully submit to and urge the adoption by the 1947 New Jersey Constitutional Convention in meeting assembled at New Brunswick, New Jersey, the following proposed section 5a, which is as follows:

Section 5a (New). No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty or property without due process of law. Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination, because of race, color, religion, or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any

business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the appropriate subcommittee of the Constitutional Convention, copies be forwarded to the press, and a copy spread in full upon the minutes of the Commission.

The above resolution was unanimously adopted by the Urban Colored Population Commission, its called organizations and committees as recommended by the state-wide legal authorities at the final meeting held at the Commission offices at 1060 Broad Street, Rooms 527-28, on July 3, 1947, at 1:00 P. M.

JOSEPH P. BOWSER, *Director*,
Urban Colored Population Comm.

Attest:

J. LEROY JORDAN, *Chairman*,
Legal Committee

Associates

HERBERT TATE, *Attorney*
J. BERNARD JOHNSON, *Attorney*
REV. JOHN TATE
WILLIAM S. DART, *Attorney*

RESOLUTION OF VETERANS OF FOREIGN WARS OF THE UNITED STATES

Resolution adopted by the officers and delegates at the State Convention held at Asbury Park, New Jersey, on June 18, 19, 20 and 21, 1947:

WHEREAS, the officers, representatives and delegates, members of 335 Posts of the Veterans of Foreign Wars of the United States, met and assembled in conference, representing the veterans of all wars of the State of New Jersey; and

WHEREAS, a resolution was adopted, and the members went on record in favor of a platform consisting of the enclosed articles, same to be presented to the delegates-elect, and to the New Jersey State Revision Convention; and

WHEREAS, a permanent veterans' revision committee was appointed consisting of veterans whose names appear below. The purpose of this resolution is to present same in writing to the delegates above named in session at Rutgers University in New Brunswick, New Jersey, for the purpose of revising the Constitution of the State of New Jersey; and

WHEREAS, the Constitution of our sovereign State is about to be revised, and there are provisions in our statutes which were enacted by legislation pertaining to the protection of our veterans in all wars against enemies who seek to destroy our democracy; and

WHEREAS, special committees having knowledge pertaining to the Bill of Rights, exemption and privileges, we go on record in submitting this resolution to the delegates-elect, for the express purpose of protecting the veterans' rights, same to be included in the revised Constitution, due to the fact that the veterans had this protection heretofore.

NOW THEREFORE BE IT RESOLVED, notwithstanding anything in this revised Constitution now in preparation contained, the Legislature shall have the power to grant preference to persons, also privileges and exemption, who shall have honorably served in the armed forces of the United States of America in the time of war, or any campaign, expedition or insurrection, their widows or wives of such persons who are disabled.

THEREFORE BE IT FURTHER RESOLVED, that the delegates-elect, by and through its committee, permit the Commander of the State of New Jersey, the Adjutant-Quartermaster and Chairman, to speak at a meeting of the Committee, if and when so privileged to do so.

BE IT FURTHER RESOLVED, that this resolution be sent to Honor-

able Dr. Clothier, Chairman of the Convention, and to Honorable Oliver Van Camp, Secretary of the Constitutional Revision Convention at New Brunswick, New Jersey.

CHARLES BECKER, *Chairman*

M. METZ COHN

CHRIS. L. EDELL

CHARLES A. PETERSON

EDWARD QUINLAN

JOSEPH H. MEADE

SHELDON F. DE BAUN

LETTER OF
WILLIAM SUMNER LEWIS POST No. 222

WILLIAM SUMNER LEWIS POST No. 222
American Legion, Jersey City
Department of New Jersey

31½ Virginia Ave.,
Jersey City, N. J.
June 29, 1947.

Hon. John F. Schenck, Chairman,
Committee on Rights, Privileges, Amendments, etc.,
New Jersey Constitutional Convention,
New Brunswick, New Jersey.

Dear Sir:

The members of the above named Post at the last regular monthly meeting by vote requested the Commander to submit the following paragraphs to become a part of the new Constitution of our State:

Firstly: "Notwithstanding anything in the Constitution contained, the Legislature shall have the power to grant preference, privileges and exemptions to persons serving, or who shall have served, in the Armed Forces of the United States of America in time of war, as may be defined by it."

Your Committee should recommend the adoption of this paragraph because it represents just reward to men who have served their country in the time of need. This was done without thought of the future or personal ambition.

Secondly: "No person shall be denied the equal protection of the law of this State or any subdivision thereof. No person shall, because of race, color, creed, or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the State or any agency or subdivision of the State."

This is a section of the Constitution of the State of New York approved by the people on November 8, 1938. It is the type of protection a progressive state offers its citizens.

The creation of this type of an instrument in a constitution becomes the duty of your Constitutional Convention. If they fail to adopt a paragraph like the above they will forever remove real protection from the helpless minorities, and they shall forever be the prey of injustice and bias.

The members of our Post are hopeful the Convention will be mindful of the veterans and minority groups of our State and

adopt the two paragraphs we have submitted. This will keep New Jersey in the vanguard of the progressive states of the Union.

These two paragraphs will protect loyal Americans from the various "isms" that are creeping into our country with rapid steps. Therefore your duty is clear in order to protect the basic ideas of real Americanism.

Yours truly,

JAMES O. RANDOLPH,
Commander

LETTER OF GEORGE WILSON, Esq.

93 Sagamore Road
Millburn, New Jersey

August 4, 1947

Constitution Revision Committee
Rutgers University
New Brunswick, New Jersey

Dear Sir:

The resolution that I am about to propose to you, if adopted, would in my opinion be one of the greatest strides in legislation that the present Convention could take. There has been quite some discussion about this topic in the past few months, and I am hopeful that the Committee has not already rejected the idea but will be able to read this recommendation with an open mind.

I refer to the question of whether or not 18-year-olds should be allowed to vote. Although it is within the power of the State to pass such a law, Georgia is the only state to have such a progressive law on its books. I believe it would be a great step toward better government, both nationally and within the State, if such a law were incorporated into the New Jersey Constitution.

As you no doubt realize, men and women in their last years of high school are intensely interested in national politics and often become involved in heated political discussions. It has not been too long since I engaged in such discussions, and I can therefore vouch for the fact that there is much logical, independent thought brought out in these arguments, plus a surprising amount of understanding about government functions. Unfortunately, however, this keen interest in political doings wanes between the time of graduation and the time when these citizens are eligible to vote. If the students were eligible to vote shortly after graduation, their political interest would not diminish and sound reasoning toward political doings would be stimulated. The advantages of this age group voting would become apparent in men of the highest calibre being elected to public office, since young men and women are independent thinkers without petty interests governing their ballot. Furthermore, their energetic attitude would result in cleaner politics throughout the nation.

I would like to see the Committee carry this law one step further by requiring all the schools in the State to give all senior year students a thorough course in political science. This course should emphasize the functions of each department of the national government, the United States Constitution, and just how public officers

are elected today. I feel quite certain that very few of the so-called mature voters of today have a clear idea of just how our democracy works and how they should go about correcting obvious wrongs in our governmental system. For instance, how many voters could explain how a bill becomes law after it first arrives in the legislative hopper? Or how many of these voters realize just what weight a letter to their Senator carries? And how many know the two ways to amend our Constitution? Gentlemen, a working knowledge of our government is certainly a prerequisite for intelligent voting. Requiring students to take American history is not enough. Furthermore, this course would be given just before the student was eligible to vote. Certainly theory followed by actual practice is one of the best keys to learning.

One of the reasons I am completely convinced of the sagacity of allowing 18-year-olds to vote results from the fact that I have seen this law in operation while stationed in Georgia. Even though I had always followed politics closely at home, I was far behind my Georgian colleagues when it came to national affairs. However, it was only a short time before I was signing my name to petitions about pertinent national questions and writing letters to my public officers.

For these reasons, and many others, I am anxious to have New Jersey prove emphatically to the nation that it is indeed a progressive State and realizes the importance of having wide-awake voters who could not possibly be misled. And there would be no better time than now, during the State Constitution revision, to incorporate a law allowing 18-year-olds to vote. I feel certain that the entire nation would reap the benefits of this legislation and that New Jersey would have then set a precedent for other states to follow.

Yours sincerely,

GEORGE WILSON

LETTER AND MEMORANDUM OF THE WOMEN'S ALLIANCE FOR EQUAL STATUS

226 Engle Street, Tenafly, N. J.

June 20, 1947.

To the Chairman and Delegates to the
New Jersey Constitutional Convention

Gentlemen:

On behalf of the Women's Alliance for Equal Status, we request that a provision for equal rights of men and women be placed in the new Constitution. In support of this request, we make the following observations:

Today women are playing a role in public affairs as responsible citizens, and the public is regarding it as a natural thing for women to do. But, when we come to the point of making a new Constitution and examine the legal status of women today, in the light of the present Constitution, we find little authority for the exercise of the rights women are assuming. The rigor of the present Constitution gave women no rights. It was a man's world when it was adopted, and women had few rights. When women asked for rights and privileges which men enjoyed, our courts held that the word "men," "persons," "citizens," "people" and other designations employed in the Constitution applied only to men. But, through the persistent efforts of women to acquire rights and privileges under the law, the Legislature has endeavored to overcome the rigor of the Constitution, and has, from time to time, over a period of a hundred years, raised the legal status of women so that today, with the right to vote, they have acquired rights nearly equal to those of men. But, there is a limitation on the right of the Legislature to establish the equal rights of men and women. The Legislature cannot surmount the rigor of the Constitution which gives to men only the right to be elected to the Legislature, to serve on juries or to hold high public office. The Legislature cannot guarantee that the rights women have gained will not be impaired or repealed. This has now become of public concern since men and women are jointly charged with public responsibilities.

We assume that the Constitutional Convention will find it expedient to recognize the legal status women have attained; to declare the equal rights of men and women, including the right to acquire, possess and defend property; to set forth in simple, but forthright terms, that men and women are equally free and independent and have the same inalienable rights to life, liberty and pursuit of happiness.

In this connection, we draw your attention to the Preamble in the Charter of the United Nations. Our country has subscribed to the Charter, therefore its aims become a part of the policy of this State. The Charter makes one of its aims: "To re-affirm faith in human rights, in the dignity and worth of the human person, in the equal rights of men and women * * *." We believe that a declaration of "faith in the equal rights of men and women" should be incorporated in the Preamble of the new Constitution as evidence of the expansion of rights and privileges to women which has taken place during the past century.

We know that the Preamble cannot actually grant equal rights, but the added phrase would make a background which would convert such faith into reality. In fact, the Committee on Rights and Privileges of the United Nations is now engaged in drafting a Bill of Rights for the United Nations. The Committee has already prepared the Preamble which reads: "* * * That it is one of the purposes of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." In section 5 they have established equality before the law, and in section 6 precluded distinction as to race, sex, language or religion. With this guide before you, aware of the duty of our State to follow the precepts of this great Body of Nations, we urge therefore, that a forthright declaration of the equal rights of men and women be placed in the new Constitution.

Respectfully submitted,

MRS. JAMES E. CARROLL,
MRS. GEORGE T. VICKERS,
Co-Chairmen,

Women's Alliance for Equal Status

MISS MARY PHILBROOK, *Chairman,*
Legislative Committee

WHY AN EQUAL RIGHTS PROVISION?

The proposed clause:

"No distinction shall be created between the rights of men and women to vote, to hold office, or to enjoy equally all civil, political, religious and economic rights and privileges."

Present status of women:

Women have no rights under the present Constitution. They are still in a subject class. This is foreign to their status as voters, public officers and soldiers in the armed forces.

Even though the Legislature has provided the way for women to

assume public responsibility and to acquire and protect vast property interests, women cannot claim them as permanent rights. They have not been granted or protected by constitutional provision, and therefore the Legislature can take them away.

This is of public concern since men and women have become interdependent as the result of these joint interests. It is now realized that the insecurity of women's rights endangers the security of men's rights, and that separate laws must give way to a fundamental law for all citizens.

It has become increasingly necessary that such a provision should be placed in the new Constitution since women are elected to the Legislature, hold public office and serve on juries. Our present Constitution gives such rights only to men, and women's right to assume such duties is subject to challenge. The Legislature is without power to alter this. It is therefore a public need which has become urgent.

Public services and our public economy require uniform laws and practices if we are to have sound public policy.

World-wide demand for equal rights:

The Charter of the United Nations in its preamble declares for fundamental human rights—"the dignity and worth of the human person"—"the equal rights of men and women." Recently the Committee on the Status of Women of the United Nations stated in its report "the purpose of the Commission is to raise the status of women irrespective of their nationality, race, language, or religion, to equality with men in all fields of human enterprise, and to eliminate all discriminations against women in provisions of statutory law and under maxims or rules, or interpretations of customary law."

Labor laws for women:

The equal rights clause must not be clouded by those who would deny women constitutional rights on the pretext that it jeopardizes so-called "protective laws" for women. Public opinion demands fair labor standards for all workers and no longer approves of singling women out for restrictions and denial of constitutional rights. To this end, the Government has led the way by the enactment of the Fair Labor Standards Act. The public has discarded the theory that labor laws for women alone are desirable. State labor leaders and women's groups are now advocating the enactment of a State Fair Labor Standards Act for all workers.

MRS. JAMES E. CARROLL and MRS. GEORGE T. VICKERS,

Co-Chairmen, Womens Alliance for Equal Status

MISS MARY PHILBROOK, *Legislative Chairman*

ANTI-DISCRIMINATION PROPOSALS OF CITIZENS¹

Dear Sir:

I urge you to support the following Constitutional proposals: (1) "The right of labor to organize and bargain collectively shall not be impaired." (2) No person may be subjected by any governmental body, private individual, group or institution to discrimination because of his race, color, religion or national origin. The civil rights protected by this clause include the right to be free from discrimination in obtaining employment, education, public accommodations, acquiring or enjoying property, and others. (3) Property taken over by the State for any purpose, including housing, "shall be enjoyed without discrimination." (4) Tax-exemption shall be denied to any charitable or educational institution, except religious or sectarian institutions, which practice discrimination.

Very truly yours,

(Signed)

¹ Members of the Committee received hundreds of these postcards from citizens of Bergen, Essex, Passaic and Union Counties.

THE NEW JERSEY SCHOOL-BUS CASE ¹

An Analysis of the Decision

The decision of the Supreme Court in the New Jersey case expressly holds that public tax funds may be used for the transportation of students to Catholic parochial schools.

(1) The opinion compels the Court for the first time to define the "establishment of religion" as set forth in the First Amendment.

(2) The opinion is unfortunate in that four of the nine Justices of the Court vigorously dissent from the majority opinion.

(3) The opinion is attacked with vigor and devastation by the dissenting opinions.

(4) The underlying constitutional principles are alike adopted by the majority and minority opinions.

(5) The majority opinion, if strictly construed, would seem to call for its later repudiation by the Court or for the enactment of a new constitutional amendment.

The majority opinion by Mr. Justice Black states the case as follows:

"The 'establishment of religion' clause of the First Amendment means at least this: Neither the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer on religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly, or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a 'wall of separation between Church and State.' *Reynolds v United States.*"

The minority opinion accepts the correctness of the principle just stated, but reaches the conclusion that the establishment of religion as used in the First Amendment compels the court to declare the New Jersey statute a breach of this Association, and therefore null and void.

The basic reasoning of Mr. Justice Black is stated as follows:

"Moreover, state-paid policemen, detailed to protect children

¹ Article from "Liberty" magazine (Vol. 42, No. 2, Second Quarter, 1947) referred to in the statement made by Weidner Titzck, Esq., Chairman of the Legislative Committee, N. J. Taxpayers' Organization to Preserve Separation of Church and State, in his appearance before the Committee.

going to and from church schools from the very real hazards of traffic, would serve much the same purpose and accomplish much the same result as state provisions intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare. And parents might refuse to risk their children to the serious danger of traffic accidents going to and from parochial schools, the approaches to which were not protected by policemen. Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks."

The weakness of this line of reasoning is pointed out by Mr. Justice Jackson in his dissent:

"It seems to me that the basic fallacy in the Court's reasoning, which accounts for its failure to apply the principles it avows, is in ignoring the essentially religious test by which beneficiaries of this expenditure are selected. A policeman protects a Catholic, of course—but not because he is a Catholic; it is because he is a man and a member of our society. The fireman protects the Church School—but not because it is a church school; it is because it is property, part of the assets of our society. Neither the fireman nor the policeman has to ask before he renders aid 'Is this man or building identified with the Catholic Church.' But before these school authorities draw a check to reimburse for a student's fare they must ask just that question, and if the school is a Catholic one they may render aid because it is such, while if it is of any other faith or is run for profit, the help must be withheld."

Mr. Justice Rutledge also call attention to the fallacy of this reasoning:

"Nor is the case comparable to one of furnishing fire or police protection, or access to public highways. These things are matters of common right, part of the general need for safety. Certainly the fire department must not stand idly by while the church burns. Nor is this reason why the state should pay the expense of transportation or other items of the cost of religious education."

Further analysis by Mr. Justice Rutledge raises the question:

"Does New Jersey's action furnish support for religion by use of the taxing power? Certainly it does, if the test remains undiluted as Jefferson and Madison made it, that money taken by taxation from one is not to be used or given to support another's religious training or belief, or indeed one's own. Today as then the furnishing of 'contributions of money for the propagation of opinions which he disbelieves' is the forbidden exaction; and the prohibition is absolute for whatever measure brings that consequence and whatever amount may be sought or given to that end."

The Court, in upholding the New Jersey statute, ignores the fact that parochial schools in fact represent a world-wide policy of the Roman Catholic Church, and Justice Jackson quotes from the Canon Law of the Church under the rubric "Catholic Schools."

"Catholic children are to be educated in schools where not only nothing contrary to Catholic faith and morals is taught, but rather in schools where religious and moral training occupy the first place.

"Catholic children shall not attend non-Catholic, indifferent, schools that are mixed, that is to say, schools open to Catholics and non-Catholics alike. The Bishop of the diocese only has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards to prevent loss of faith it may be tolerated that Catholic children go to such schools. (Canon 1374.)"

The foregoing observations compelled the Justice to remark that "Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church School is indistinguishable to me from rendering the same aid to the Church itself," and further that "if the state may aid these religious schools, it may therefore regulate them."

It is true that this decision apparently upholds similar legislation in sixteen States, and at the same time invites other States to enact similar laws. It must also be stated that the Catholic Church is not the only offender in this regard. Notorious cases exist where Protestant denominations are both demanding and receiving aid from tax money violative of the Constitution.

From a purely practical approach, it is apparent that, if the state may use public funds to pay the bus fare of children to parochial schools, it may logically pay other expenses of such schools. It is easy to see that such a doctrine might ultimately destroy the public school system, and would cause widespread demands for a division of school funds between public schools and religious schools. This becomes more evident when it is recalled that there are in the United States two hundred and fifty-eight (258) different religious denominations. Imagine, if you can, the scramble and confusion that would result if each of them had the legal right to dip into the public school funds in order to maintain its separate schools. The public school system as we have known it would be greatly impaired, if not completely destroyed. What an irreparable tragedy it would be to allow state enactments masquerading in the garments of police power or the general welfare clause to gradually whittle away our great constitutional safeguards. The statute in question is the thin edge of the wedge which, when driven all the way in, will split American democracy wide open.

COMMITTEE
ON THE
LEGISLATIVE

RECORD
OF
PROCEEDINGS

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Wednesday, June 18, 1947

(Executive session)

*(Minutes)*¹

A meeting of the Committee on the Legislative, appointed by President Clothier of the Constitutional Convention at a meeting held at 2:00 P.M. this day, was held at 3:30 P.M. The following, being all the members, were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Morrissey, Proctor and Sanford.

Chairman Edward J. O'Mara opened the meeting by calling the roll.

CHAIRMAN: First, we should select a Secretary of the Committee. At luncheon with Dr. Clothier the general thought was adopted, subject, of course, to the wishes of the various Committees, that there be selected from among the members of the Committee a Secretary, responsible for the proper supervision of the minutes of the committee meetings, who would also act as contact man with the Secretary of the Convention for the passing back and forth of communications between the Convention and the Committee, and also keep in contact with the Committee on Rules, Organization and Business Affairs, etc. It is understood, of course, that the Secretary of the Committee would have a stenographer, Mrs. Ayres or someone else, to take the notes.

The first order of business would be the selection of a Secretary of the Committee from among the members. I am open to suggestions.

MR. JOHN L. MORRISSEY: I would like to nominate one of the Assemblymen, due to the fact that there are so many members of the Senate. I nominate Leon Leonard, of Atlantic County.

MR. HAYDN PROCTOR: I second the nomination.

(There were no further nominations. A motion was made and seconded that the nominations be closed)

CHAIRMAN: Moved and seconded that the nominations be closed. All in favor say "Aye."

¹ These minutes, like the others covering executive sessions of the Committee on the Legislative, were kept by Mrs. C. Lillian Ayres at the direction of the Committee. They have been edited for style and clarity only, and are included in order that the record may be as complete as possible.

(Unanimous vote for Mr. Leonard)

CHAIRMAN: Mr. Leonard is Secretary of the Committee.

MR. LEONARD: Thank you, ladies and gentlemen. With the assistance of the stenographer, I am sure the meetings will be properly recorded.

CHAIRMAN: I don't know what we can do today about formulating a program for the committee activities.

MR. LEONARD: I think we ought to discuss that question.

CHAIRMAN: I might make one or two observations in connection with the so-called timetable of the Convention. The resolution¹ adopted on the opening day of the Convention fixed the 7th of July as the limit for introduction of Proposals, and the 31st of July as the time within which Standing Committees should report to the Convention. Debate is to be completed by the 31st of August—which is hopeful.

MR. DOMINIC A. CAVICCHIA: I suggest that that is in the Rules. The timetable is in the Rules.

CHAIRMAN: At any rate, it is a guide which we may follow in mapping our own course. There is this problem—we have to consider it closely. All of the Proposals will not be in, presumably, until the 7th of July. Whether we are to hold public hearings before that time or not is a question which ought to be considered. My own judgment is that we should not waste the time between now and the 7th of July waiting for Proposals to come in, and we should have, perhaps, at least one public hearing prior to that time. On the other hand, it has been suggested that a public hearing is not of very great help unless we have a more or less definite proposal outlined there for discussion. As a result of the discussion at the luncheon, it is for the Committees themselves to work out their own procedure. You might follow the trend of that discussion; we can decide for ourselves what we want to do.

MRS. OLIVE C. SANFORD: There should be no hearing unless you have some proposal. Dr. Clothier said that the question should be held in abeyance—it would create an unfortunate impression.

MR. PROCTOR: My thought is to have a hearing with no Proposals—everything just “cold.” Publish it in the paper, have it advertised, and then have anybody speak to us who wants to. Then we can formulate our own opinions from what they say—a skeleton framework. We may waste a day.

MRS. SANFORD: It would save time if they would bring in their Proposals.

MR. CAVICCHIA: Have any Proposals been forwarded to you?

CHAIRMAN: No.

MR. CAVICCHIA: As I understand the set-up, Proposals will

¹ Adopting the Rules of the Constitutional Convention.

be those introduced by the delegates; then there will be communications or recommendations which will go to the Convention and then come to us. The Proposals will be printed; the others will not. I suppose we ought soon to be getting Proposals or communications. Those who make these Proposals or communications would come and be heard.

CHAIRMAN: Several of the chairmen at the luncheon had suggestions along this line and they contain valuable material. First, that there ought to be, perhaps, one public hearing at least, prior to the time or about the time when the introduction of Proposals expires. The members of each Committee, in the meantime, should discuss among themselves what they think is a proper Article and then, when the time for the introduction of Proposals has expired, the Committee will draft an Article, having the advantage of all Proposals. On the other hand, the suggestion made was to study and think on the matter, draft a tentative Article which should be published in the newspapers, a public hearing to be held on that tentative Article some time after the middle of July. Whether that meets with your approval or not, I don't know.

It seems to me that the first thing for us to do is for each of us to take the Rules on page 8, top of page—the Rules specify the matter for our consideration. It is on the legislative subject matter: Article IV of the existing Constitution, except Section VI, paragraphs 2, 3 and 4, and Section VII, paragraphs 6, 10 and 12, including all provisions of the proposed Schedule relating thereto. The first thing for us to do, individually, is to take the present Constitution, mark out the provisions of that Article not referred to us for consideration, then give our thought and study to the remaining provisions which are submitted to us for consideration. Then, for the next several meetings, let us find out what our own thought is on the present provisions of the Constitution which are referred to us. That seems to me the way to proceed. Then, we could take the Proposals that come in and see whether they fit in; whether we wish to recommend them to the Convention or reject them and, in that way, follow up the tentative Article's purpose and have hearings on it. We ought to have one public hearing before we publish any tentative draft.

MR. CAVICCHIA: Publish a tentative draft before we report to the Convention?

CHAIRMAN: Exactly my idea. I think we should give it to the press and say, this has been adopted by the Committee on the Legislative as a preliminary, tentative draft for public discussion and the public is invited to attend.

MR. ARTHUR W. LEWIS: I think it is a very good idea.

CHAIRMAN: I certainly want everybody to make suggestions.

It is better thoroughly to agree about the initial public hearing. If we miss that, we will have public protest. There are probably 25 groups who have fixed opinions for every Article of the Constitution. We want to hear them as early and as quickly as possible. We should at least hold one public hearing.

MR. LEWIS: I wholeheartedly agree with your suggestion on Proposals and the official tentative draft of the Article and the public hearings thereon.

MR. PROCTOR: I move that we have a hearing as soon as possible, the date to be fixed by the Committee.

CHAIRMAN: Judge Proctor moves that a public hearing be held. The motion is open to discussion.

MR. LEONARD: May I inject some questions that have to be determined? I think before we fix any dates, we ought to settle among ourselves what days we will have committee meetings. When we decide that, the public hearings can be guided by those days. We should satisfy ourselves on how many days of the week we will meet, for the time being, and what days of the week we will meet.

MR. PROCTOR: There should be the public hearing.

CHAIRMAN: It is going to take the members of this Committee some time to consider the provisions of the Constitution submitted for our consideration. This is the 18th. The tentative schedule of the Convention for the next few weeks is to meet on Tuesday mornings at 10:00 o'clock. It is anticipated that the work of the Convention proper will be very meagre for the next few weeks and that the Committees will function immediately after the recess of the Convention. Does anybody think this Committee should meet any additional day this week?

MR. PROCTOR: I think next Tuesday would be soon enough.

CHAIRMAN: We can devote the time to individual study of the existing provisions of the Constitution referred to us under the Rules. We might tentatively discuss these at our next meeting and say which are proper to keep in the proposed new Article.

MR. PROCTOR: Suppose we have the next meeting at 11:00 o'clock or as soon thereafter as the Convention adjourns, and have this hearing the following Friday.

MR. LEONARD: I suggest we meet each Tuesday afternoon between now and the time we finish our work, at 1:30. That would give time off for a bite of lunch. . . . At 1:30 following the Convention meeting, and we could meet Wednesday at 10:00 A.M. The elimination of Wednesday and such other days would be the problem of the Chairman.

(Seconded)

MR. LEWIS: Why would it not be each day the Convention meets, as soon as the Convention is over? In other words, we will

all be here. On Tuesday at 1:30 and the additional day, Wednesday, at 10:00 A.M.

MR. CAVICCHIA: The Convention is meeting the one day. I agree with that.

MR. PROCTOR: Meet the next day so members can stay over.

CHAIRMAN: It is the motion of Mr. Leonard that this Committee meet on Tuesdays and Wednesdays for the present, and at such further times as the interests of the case may require.

MR. LEONARD: Committee meetings Tuesday at 1:30 P.M. and Wednesdays at 10:00 A.M. Senator Proctor seconded the motion.

CHAIRMAN All in favor say "Aye." . . . Motion unanimously carried.

MR. PROCTOR: Would it not be advisable, instead of having a preliminary public hearing, to hold a preliminary open meeting and invite the public to submit proposals—say, a hearing on anything specific next Wednesday morning at 10:00 A.M. This Committee will be sitting for the purpose of receiving information and suggestions, and then, at the close of that open meeting, go into session and discuss the proposals and suggestions. Later, the Committee could go into a public hearing.

MR. CAVICCHIA: Communications should be addressed to the Convention and they go there and are noted in the record.

MR. LEONARD: John Jones will come here representing a manufacturers' association, and say: "I have a script I want to file with the Secretary or someone," and we will have a written script. It is not only groups and organizations who will come, but John Q. Public who will just talk. That should all be done on the day we have the open meeting. He would say: "This will only take five minutes."

MR. PROCTOR: Let them talk.

CHAIRMAN: At a public hearing they will come in and make proposals. We ought to have a form of public hearing. When do you want to have them?

MR. PROCTOR: Is next Wednesday too early?

CHAIRMAN: We might give the first week to discussion among ourselves.

MR. PROCTOR: Then the following Wednesday?

MR. LEONARD: Publicity ought to go out. We do not have much time.

MR. PROCTOR: The first public hearing on the following Wednesday, two weeks from today, July 2.

(Seconded)

CHAIRMAN: Motion by Judge Proctor that the first public hearing be held by this Committee on July 2 at 10:00 o'clock in the morning and that it be publicized in the press that the meeting

is open to the public. Seconded by Mr. Cavicchia.

MR. LEWIS: The Convention may conflict with that.

CHAIRMAN: The Convention is going to meet on Tuesdays for the present. . . . All in favor say "Aye." . . . The motion is adopted unanimously.

The next question is the place. It is obvious to me that this room is not suitable for a public hearing.

MR. PROCTOR: Can't we use the Gymnasium?

MR. CAVICCHIA: Suppose we authorize our Secretary to arrange with the Secretary of the Convention or Rules Committee, whichever is the proper body, to furnish us with a suitable room for holding a public hearing on July 2, in New Brunswick. This is the beginning; why not identify it as the "first" public hearing?

(A recess was taken so that the Secretary could arrange with the Secretary of the Convention for use of the Gymnasium for a public hearing of the Committee on the Legislative on July 2, 1947, at 10:00 o'clock in the morning. The meeting resumed upon the return of the Secretary who reported that such arrangements had been made)

CHAIRMAN: Various newspapers have asked if it is possible to arrange to hold hearings in various sections of the State. I do not know whether there will be enough interest in the Legislative Article to warrant holding meetings in other sections of the State, and I do not know how we can determine whether there is enough interest. If interest is manifested, we ought to make available to all sections of the State the possibility of attending public hearings. The Committee could be divided into sub-committees to conduct these hearings. I have had suggestions from several newspapers that it is unfair to expect people to come to New Brunswick from distant points.

MR. LEWIS: There should be publication of the workings of the Committee and mention that if there is a request, the parties notify the Chairman as soon as possible. Would it not be advisable briefly to abstract the provisions of Article IV, two or three readable paragraphs as to the basic principles relating to Article IV, to permit them to suggest these proposed changes? I doubt if the public is familiar with the details of this Article. Could we not, in a paragraph or two, educate the public as to the present Constitution we are considering and invite the public thoughts—just as an educational matter?

MR. PROCTOR: I disagree with Senator Lewis. If it has not been understood by now. . . . Those who would appear have some familiarity with the Constitution. I think we should stay away from the old Constitution.

CHAIRMAN: I have to report that there has been a communication handed to me from the League of Women Voters. This deals not only with the Legislative Article but all proposed changes which the League favors.¹ The pages dealing with the Legislative Article have been turned down—the leaves turned down—the pages marked.

MR. LEWIS: First, a suggestion of giving notice to the public: do they want to have a hearing outside the committee room—outside New Brunswick?

CHAIRMAN: Senator Lewis moves that the publicity emanating from this Committee advise the public that, if it is desired that the Committee hold hearings in other sections of the State than New Brunswick, they are requested to communicate their desires to the Chairman of the Committee as quickly as possible.

(Seconded)

Seconded by Judge Proctor. All in favor say "Aye." . . . The motion is adopted, unanimously.

Is there any other matter for discussion? There is the question of publicity. I think that is very important. Bad publicity given out can do this Committee harm. We ought to have some expression of opinion from the Committee on who should give public releases.

MR. LEONARD: The Chairman and only the Chairman.

MR. PROCTOR: I move that the Chairman, alone, be authorized to give releases and statements to the press concerning the work of the Committee.

(Motion unanimously adopted)

MR. LEONARD: I'll have to go down the hall. We want to give out publicity today about the first public hearing to be held.

(Mr. Leonard left the meeting)

MEMBER: Which sections of the present Article shall we consider?

MR. PROCTOR: I don't see why we don't mark off the paragraphs which logically belong in other sections of the Constitution. The section to the effect that no money shall be withdrawn from the Treasury of the State except on appropriations, etc., has been referred to some other Committee—Taxation and Finance. Other provisions which have been eliminated from our consideration are provisions which logically belong to some other Article of the Constitution.

MR. CAVICCHIA: The subject matter for this Committee is made up under the rules. There is nothing really eliminated. The provisions now eliminated logically go somewhere else.

¹ The League proposals appear in the Appendix to these Committee Proceedings.

MRS. SANFORD: Submitted to some other Committee.

(Mr. Leonard returned)

MR. LEONARD: Mr. Chairman and Committee: I have to report the Executive Committee has set Thursday, June 26, as their first hearing. Subsequent to that they have no present plans. They have noticed our selection of July 2. The Judicial Committee is starting next week with the presentation of briefs. They likewise will take notice of the fact that we are going to preempt the Gymnasium. I couldn't see the Committee on Taxation and Finance—I will see Secretary Van Camp and make formal application for the date and then release publicity to the papers.

MR. LEWIS: Are there other facilities? Couldn't we get a smaller place where we could talk more informally?

CHAIRMAN: I don't know whether there are any other facilities available.

MR. PROCTOR: This is the best place. You will have the speakers on the floor, leaving the galleries for the spectators.

CHAIRMAN: Let's try it in the Gym, and ask Dr. Clothier what is available.

(Mr. O'Connor of the Newark News, whispers to Chairman)

CHAIRMAN: Mr. O'Connor says there is a smaller gymnasium on the second floor.

MR. LEWIS: I move that we leave that question with the main Gym. If they congregate here, we can direct them to any satisfactory meeting place.

CHAIRMAN: It is close to time for adjournment. Should we be prepared at the next meeting to discuss, among ourselves, independent proposals and existing sections of the Legislative Article—start our own thinking over a tentative proposal? I suggest that we start with Article IV, Section I, suggest changes without debate—have the various thoughts of the committee members. The first paragraph of the Article, as I recall it, is that legislative power be vested in the Senate and General Assembly. We could agree among ourselves—see if we are practically unanimous—note the various shades of thought, without any debate.

MR. LEWIS: There is always an overlapping between the Legislative and the Executive.

CHAIRMAN: That goes to the Committee on Arrangement and Form.

MR. CAVICCHIA: Arrangement and Form has to do only with form.

CHAIRMAN: There is a Committee, I do not know which one or its heading, whose function is to avoid duplication in the various Committees. We are dealing with a certain subject and the Executive Committee may have a similar subject; that is referred

to another Committee to straighten out. It will work out as we go along.

MRS. MYRA C. HACKER: I think there is a separate Committee.

MRS. SANFORD: I have a suggestion for the stenographer—that the minutes of each committee meeting be sent to the homes of the members of the Committee a couple of days ahead of the next meeting, so that we may be freshly prepared with it. I do not know whether that would be possible or not, but I think it would be well if we could get copies of the minutes sent to our homes in advance. We ought to arrange, if possible, with the proper Committee for secretaries or stenographers of the Convention to work in relays on the public hearing. It is too much for one stenographer to take without rest—also to transcribe it to get it to the Committee in time to be of use.

MR. CAVICCHIA: They will work in relays at the public hearings.

MR. PROCTOR: Do the Rules now adopted by the Convention contemplate the procedure at public hearings?

CHAIRMAN: That will be left to the Committee. We want to follow that up between now and the date of the public hearings.

MR. CAVICCHIA: We had better look at the Rules. In the preliminary draft, one of the Committees had authority to promulgate rules for public hearings. It may still be in there.

CHAIRMAN: We should examine the Rules to determine that, and if there is no provision, discuss it at our next meeting—what procedural rules we should follow. Those who desire to speak must register; some reasonable time should be allotted to the speaker. We do not want to sit and listen to one speaker for an hour, with everyone else foreclosed. A reasonable limit on the time to speak should be imposed—long enough to hear what they have to say.

MR. LEONARD: Mr. Chairman, under our schedule we have passed resolutions to meet Tuesdays and Wednesdays; no public hearings for two weeks. We can, therefore, arrange our programs to meet next Wednesday.

CHAIRMAN: We will be scheduled next Tuesday at 1:30 P.M. and next Wednesday from 10:00 A.M. to 1:00 P.M.

(The meeting adjourned)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, June 24, 1947

(Executive session)

(Minutes)

A meeting of the Committee on the Legislative was held at 11:00 A.M. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Morrissey, Proctor and Sanford.

Chairman Edward J. O'Mara opened the meeting.

A motion was made and seconded that the minutes of the meeting of the Committee, held on June 18, 1947, be approved. The motion was unanimously carried.

The Secretary, Mr. Leonard, stated that no proposals had been referred by the Convention to the Committee and only one communication had been received.

A motion was made by Senator Lewis, seconded by Mr. Cavicchia, that the Committee request the Chairman to secure the services of a technician. A further suggestion was made that the Chairman talk with Mr. Charles DeF. Besore, to determine if he would be available in this connection. The motion was unanimously carried.

There was a tentative, round table discussion, without debate, of the provisions of the Constitution referred to this Committee for consideration.¹

On motion, the meeting adjourned until 2:15 P.M.

* * *

The meeting of the Committee on the Legislative reconvened at 2:15 P.M., all members being present.

The Chairman stated: "I have just received a communication from the League of Women Voters, addressed to me, as Chairman of the Committee, which reads:

"The League of Women Voters of New Jersey has adopted by resolution the enclosed proposals for presentation to the New Jersey Constitutional Convention. They are hereby submitted to you as Chairman of the Legislative Committee.

The parts of The Legislature, pp. 2-7, cover recommendations which are the special concern of your Committee and we trust that they will receive careful attention.² The League of Women Voters will appreciate time on the committee agenda to speak for these proposals.

Very truly yours,

(Signed) Rachel C. Heinz

Mrs. W. B. Heinz, *Chairman*

Government Operation Department."

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

² These recommendations appear in the Appendix to these Committee Proceedings.

There was further informal and tentative discussion of the provisions of the Constitution referred to the Committee for consideration.

Upon motion, duly made, seconded and unanimously carried, the meeting adjourned until 10:30 A.M. tomorrow, June 25, 1947.

COMMITTEE ON THE LEGISLATIVE
Tuesday, June 24, 1947
CONFERENCE NOTES

CHAIRMAN: Under the Rules, there is submitted for our consideration Article IV, Legislative, of this Constitution, with the exception of Section VI, which is found on page 12, paragraphs 2, 3 and 4, and Section VII, paragraph 6, which is on page 14, paragraph 10, which is on page 15, and paragraph 12, which is on page 16. These are out.

Section I, paragraph 1:

The Committee was unanimously of the opinion that this paragraph should be retained without change.

Paragraph 2—1st clause:

The Committee was of the opinion that the qualifications for a member of the Senate should be retained as presently set forth in the Constitution, with the exception that the word "inhabitant" should be changed to "resident"; and Mr. Jorgensen felt that a Senator should be a resident of the State for at least ten years.

2nd clause:

The Committee was of the opinion that the present qualifications for membership in the House of Assembly should be retained, with the exception that the word "inhabitant" should be changed to "resident"; and Mr. Jorgensen felt that the qualifications for residence in the State for a member of the Assembly should be five years.

3rd clause:

The Committee was unanimously of the opinion that the requirement of the present Constitution that no person shall be eligible as a member of either House of the Legislature, who shall not be entitled to the right of suffrage, should be retained. It was suggested, however, that the word "provided" be changed to the word "but," if that phraseology is used throughout the final draft of the proposed Constitution.

Section I, paragraph 3:

The Committee was unanimous in recommending the elimination of the first clause of paragraph 3 from the Legislative Article of the Constitution, but recommended to the proper Committee a constitutional provision that general elections be held on the first

Tuesday after the first Monday in November, and that the members of the Legislature shall be elected at general elections; also that the time of holding such elections may be altered by the Legislature. The Committee was unanimously of the opinion that there should be annual sessions of the Legislature, to commence on the second Tuesday of each January.

The Committee decided to defer, for future consideration, the question of a possible limitation upon the length of the regular legislative session.

It was unanimously agreed that the question of the manner of calling a special session of the Legislature, and the limitation of the powers of the Legislature and the duration of the special session, be deferred for further consideration.

Section II, paragraph 1:

The Committee was unanimously in favor of a four-year term for members of the Senate.

Paragraph 2:

The question of whether or not members of the Senate should be divided into classes for the purpose of election was reserved for further consideration. The Committee was unanimously of the opinion that, if vacancies happen, by resignation or otherwise, the persons elected to fill the vacancies shall be elected for the unexpired term only.

Section III, paragraph 1:

The Committee was unanimously of the opinion that members of the Assembly should be elected biennially for a two-year term.

The Committee was unanimously of the opinion that the provisions of Section III, paragraph 1, dealing with the apportionment of members of the House of Assembly, shall remain unchanged.

(The meeting adjourned until 2:15 P.M.)

* * * * *

(The meeting reconvened at 2:15 P.M.)

Section IV, paragraph 1:

The Committee was unanimously of the opinion that the provisions of Section IV, paragraph 1, should be retained.

Paragraph 2:

The Committee was unanimously of the opinion that the provisions of Section IV, paragraph 2, should be retained without change, subject to possible clarification of language as set forth in the 1944 Proposed Constitution.

Paragraph 3:

The Committee was unanimously of the opinion that Section IV, paragraph 3, should be retained, subject to the addition of the words "of all its members" after the words "two-thirds."

Paragraph 4:

The Committee was unanimously of the opinion that the provisions of Section IV, paragraph 4, should be retained without change.

Paragraph 5:

The Committee unanimously felt that the provisions of Section IV, paragraph 5, should be retained without change.

Paragraph 6:

The members of the Committee were unanimously of the opinion that the provisions of Section IV, paragraph 6, should be deferred for further consideration, and that thought should be given to the wisdom of including a provision requiring a specified length of time to elapse before a bill may be moved on third reading.

Paragraph 7:

The majority of the Committee felt that the compensation of Senators and Assemblymen should be on an equal basis. Messrs. Camp and Jorgensen dissented and felt that the compensation of Senators should be somewhat higher than that of Assemblymen. The various members of the Committee expressed their feeling as to the amount of compensation, as follows:

Leonard	\$3,000 to \$2,000—would go along with any figure between
Lance	\$2,000—no expenses, no mileage
Hacker	\$2,000—possible increase
Proctor	\$2,000—flat
Morrissey	\$ 500
Lewis	\$2,000—mileage
Cavicchia	\$1,500—certainly not in excess of \$2,000
Sanford	\$2,000
Camp	\$3,000—Senators \$2,500—Assemblymen
Jorgensen	\$3,000—Senators \$2,500—Assemblymen
O'Mara	\$2,500—everybody

There was unanimous agreement by the Committee that the President of the Senate and the Speaker of the House of Assembly should be entitled to some additional compensation for services in such offices, the amount thereof to be deferred for further consideration until final determination of the amount of salaries of Assemblymen and Senators.

Paragraph 8:

The Committee was of the unanimous opinion that the protection afforded to members of the Legislature by Section IV, paragraph 8, should be retained, and reserved for further consideration

the question of whether or not the privilege against being questioned in any other place should be extended to committee hearings of either House.

Section V, paragraph 1:

It was the unanimous opinion of the Committee that the present provisions of Section V, paragraph 1, should be stricken, and that there should be substituted therefor the provisions of Article III, Section III, paragraph 3 of the Proposed Constitution of 1944, with the following exceptions: That the word "elected" should possibly be eliminated, that the word "law" in the sixth line should be eliminated and the words "the Legislature" should be inserted in lieu thereof. Also, it was the consensus of the committee members that further consideration should be given to the elimination of the last sentence of Article III, Section III, paragraph 3, of the Proposed Constitution of 1944; that further consideration be given to the question of whether or not the prohibition against the eligibility of members of the Senate and General Assembly, as expressed in that paragraph, should be broadened to include other than state offices.

Paragraph 2:

The Committee felt that the provisions of Article III, Section III, paragraph 4 of the Proposed Constitution of 1944 should be substituted for the present provisions of Article IV, Section V, paragraph 2.

Paragraph 3:

It was the unanimous opinion of the Committee that Article III, Section III, paragraph 5 of the Proposed Constitution of 1944 should be substituted for Article IV, Section V, paragraph 3 of the original Constitution of 1844.

(The meeting adjourned)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Wednesday, June 25, 1947

(Executive session)

(Minutes)

A meeting of the Committee on the Legislative was held at 10:30 A.M.

Chairman Edward J. O'Mara opened the meeting by calling the roll. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Lewis and Sanford.

Absent: Leonard, Morrissey and Proctor. (Mr. Leonard and Senator Morrissey arrived later and were marked present.)

In the absence of the Secretary, the Chairman, on motion duly made, seconded and unanimously adopted, appointed Judge Lance as temporary secretary of the meeting.

A motion was made and seconded that the minutes of the last meeting be approved. The motion was unanimously carried.

The Chairman suggested that the Committee resume discussion of the sections of the Constitution referred to it by the Constitutional Convention for consideration.

Mr. Leonard, having arrived, took over his duties as Secretary.

The Committee conducted an informal and tentative discussion of the provisions of the sections of the Constitution referred to it by the Constitutional Convention for consideration.¹

On motion made by Mr. Leonard, seconded and unanimously adopted, Mr. Sidney Goldmann, of the Constitutional Convention Library and Archives, was requested to undertake a digest of the provisions relating to gambling and lotteries in the constitutions of other states, and to have such digest available to all members of the Legislative Committee at a future hearing; and that further consideration of the provisions of Section VII, paragraph 2, be deferred to a future meeting.

There was further tentative and informal discussion of that part of the Constitution referred to the Committee by the Constitutional Convention for consideration.

On motion duly made, seconded and unanimously adopted, the meeting recessed until 2:00 P.M.

* * * * *

The meeting of the Committee on the Legislative reconvened

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

at 2:00 P.M., all members being present with the exception of Senator Proctor. Mr. Charles DeF. Besore was also present in response to the request of the Committee, as set forth in the minutes of the meeting of June 24, 1947.

The Chairman read into the record a letter addressed to Dr. Clothier, as President of the Constitutional Convention, by the Governor, dated June 20, 1947, as follows:

"My dear Mr. Clothier:

On May 29th, one of our citizens, Rudolph Vogel, Jr., whose address is 143 Lawrence Road, Trenton, New Jersey, was kind enough to forward me the following suggestion for the consideration of the Constitutional Convention:

'No member of the Legislature shall participate in any transaction involving the State of New Jersey or any municipal corporation thereof in a contractual relationship either individually or thru his business or professional affiliations during the term for which he was elected and for one year thereafter.'

I would appreciate it if you would refer this recommendation to the appropriate committee for its considered study.

Very truly yours,

(Signed) Alfred E. Driscoll
Governor."

The Chairman also read into the record a copy of Dr. Clothier's reply to the letter of the Governor, above set forth, dated June 25, 1947, as follows:

"My dear Governor:

This will acknowledge receipt of your letter of June 20 incorporating suggestion from Rudolph Vogel, Jr., for the consideration of the Constitutional Convention.

Please be assured that the communication will be referred to the Legislative Committee for consideration.

Sincerely,

Robert C. Clothier."

Senator O'Mara then read into the record a letter, dated June 25, 1947, addressed to him as Chairman of the Legislative Committee, by Oliver F. Van Camp, Secretary of the Constitutional Convention, as follows:

"Dear Mr. Chairman:

The American Legion, Department of New Jersey, has requested a hearing before your Committee at a date in the near future. Would you please fix a time and advise me so that I may in turn advise the Department Commander and Judge Advocate of the time they are to appear before your Committee.

Sincerely yours,

(Signed) Oliver F. Van Camp
Oliver F. Van Camp
Secretary."

The Chairman suggested that the Committee advise Mr. Van Camp that he may notify the American Legion that a public hearing will be held by this Committee on July 2, 1947, at 10:00 A. M. On mo-

tion duly made, seconded and unanimously adopted, it was so ordered.

On motion of Senator Lewis, duly seconded and unanimously adopted, the following notice, with reference to public hearing of the Legislative Committee, was released for publication in various newspapers:

"NOTICE IS HEREBY GIVEN that the Committee on the Legislative will hold a public hearing on the Legislative Article of the proposed new Constitution, in the Gymnasium, at Rutgers University, New Brunswick, on Wednesday, July 2, 1947, at ten a.m. All interested citizens are invited to appear and give the Committee the benefit of their suggestions with regard to the subject matter of the proposed article.

Among the matters which will be considered by the Committee are the following:

1. The qualifications, terms of office and compensation of members of the Legislature.
2. Sessions, organization and procedure of the Legislature.
3. Ineligibility of members of the Legislature for civil office, and disqualification of members.
4. Provisions relating to zoning and condemnation of property.
5. Constitutional provisions relating to horse racing and other forms of gambling.
6. Various limitations upon the legislative power.
7. All other subjects which might properly be included in the Legislative Article, such as regulation of lobbyists, the establishment of a legislative council, prohibition against mandatory legislation respective municipalities, initiative and referendum, etc.

The attention of the public is called to the fact that, by the Rules of the Convention, the provisions of the Legislative Article of the present Constitution, dealing with the withdrawal of money from the State Treasury; the use of the credit of the State; the manner of creating debts or liabilities of the State; the fund for the support of free public schools; the vesting of power with relation to the foreclosure of mortgages; and the method of assessing taxes; are not to be considered by this Committee but have been referred to other Standing Committees of the Convention.

It is requested that those who desire to speak shall register, upon arrival, with the Secretary of the Committee prior to the hearing.

It is suggested that the filing of briefs or written statements, outlining the position of the speakers, will be helpful to the Committee. Citizens who do not find it possible to attend the hearing in person may file their recommendations or written statements with the Committee any time prior to July 7, 1947."

There was further discussion of the provisions of the Constitution referred to this Committee for consideration.

Motion was made, seconded and duly carried that a copy of the conference notes of the meeting of the Committee of June 24, of minutes of previous meetings, and all other documents which have been and may be distributed to the members of the Committee be also given to Mr. Besore, as technician of the Committee.

On motion made, seconded and duly adopted, the meeting adjourned until Tuesday, July 1, 1947, immediately following the recess of the meeting of the Constitutional Convention, which is scheduled to convene at 10:00 A.M. of that day.

COMMITTEE ON THE LEGISLATIVE

Wednesday, June 25, 1947

CONFERENCE NOTES

The Committee continued consideration of the existing sections of Article IV:

Section VI, paragraph 1:

The Committee was of the opinion that the provisions of Section VI, paragraph 1, should be preserved in its present form, Judge Lance and Senator Lewis dissenting. Judge Lance took the position that the paragraph should be eliminated; Senator Lewis concurred in Judge Lance's decision.

Paragraph 5:

The Committee unanimously agreed that the language of Article III, Section IV, paragraph 5 of the Proposed Constitution of 1944 should be substituted for the provisions of Article IV, Section VI, paragraph 5 of the existing Constitution.

Section VII, paragraph 1:

The Committee unanimously felt that the provision of Section VII, paragraph 1 should be retained. It should be noted that the provision should, possibly, be transposed to some other position in the Article.

Paragraph 2:

It was the unanimous opinion of the Committee that further consideration of this paragraph should be deferred to a future date.

Paragraph 3:

It was the unanimous opinion of the Committee that the provisions of Section VII, paragraph 3 should be retained without change.

Paragraph 4, 1st sentence:

The Committee was unanimously of the opinion that the first sentence of paragraph 4 should be stricken and, in its place, be inserted paragraph 4 of Article III, Section V of the 1944 Proposed Constitution.

2nd, 3rd and 4th sentences:

It was the unanimous opinion of the Committee that the second, third and fourth sentences of paragraph 4 be retained without change.

Paragraph 5:

The Committee unanimously agreed that the provisions of Section VII, paragraph 5, should be retained.

Paragraph 7:

The Committee unanimously agreed that the provision of Section VII, paragraph 7, should be retained.

Paragraph 8:

The Committee unanimously agreed that the provisions of Section VII, paragraph 8, should be retained, but reserved for future consideration the question of whether or not there should be a constitutional provision dealing with the nature of the estate to pass by condemnation proceedings.

Paragraph 9, 1st sentence:

The Committee was unanimously of the opinion that the first sentence of Section VII, paragraph 9, should be retained.

2nd sentence:

The Committee was unanimously of the opinion that the second sentence of Section VII, paragraph 9, be stricken and there be inserted, in lieu thereof, the second sentence of Article III, Section VI, paragraph 9 of the Proposed Constitution of 1944.

Paragraph 11:

It was unanimously agreed by the Committee that further consideration of Section VII, paragraph 11, be deferred to the next meeting.

Section VIII, paragraph 1:

It was unanimously agreed that the provisions of Section VIII, paragraph 1, be retained without change.

Paragraph 2:

It was unanimously agreed that the provisions of Section VIII, paragraph 2, be retained without change.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 1, 1947

(Executive session)

(Minutes)

A meeting of the Committee on the Legislative was held at 11:00 A.M.

Chairman Edward J. O'Mara opened the meeting by calling the roll. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Proctor and Sanford. (Mr. Charles De F. Besore, committee technician, was also present.)

Absent: Morrissey.

A motion was made and seconded that the minutes of the last meeting be approved. The motion was unanimously carried.

The Chairman reported to the Committee that Mr. Sidney Goldmann, of the Constitutional Convention Library and Archives, pursuant to request, has furnished for the use of each member of the Committee a digest of the provisions of the constitutions of other states relating to lotteries and gambling.

The Chairman also reported that he had received by mail the following resolution, dated June 13, 1947, signed by various organizations, headed by Homer Harkness Marine Corps League:

"RESOLUTION TO AMEND NEW JERSEY GAMBLING LAWS

WHEREAS, the American Legion, the Veterans of Foreign Wars (V.F.W.), the Amvets, the Disabled American Veterans (D.A.V.), The Marine Corps League, Purple Heart, Spanish American Veterans, Chin Strap Post 29 Div., the Jewish War Veterans (J.W.V.) and the Catholic War Veterans (C.W.V.) are organizations comprised of men and women who honorably served in the Armed Forces of the United States during World Wars I and II and are in agreement with the Gold Star Wives;

WHEREAS, it becomes necessary for the individual posts of said veterans' organizations to sponsor carnivals, raffles, bazaars and other social functions in order to realize revenue destined for charitable purposes and to keep said posts in existence;

WHEREAS, gambling *per se* is not in and of itself immoral;

WHEREAS, the State of New Jersey by an amendment to its Constitution has proved that gambling is not inherently evil by legalizing horse racing and wagering at its three race tracks, no receipts from which ever being used to promote any charities;

WHEREAS, the various veterans' posts throughout the State cannot continue to exist merely on the dues of their members without the aid of this outside revenue derived from the above mentioned carnivals, bazaars, etc.;

WHEREAS, these same veterans' posts do not think that the people of the

State of New Jersey intend or desire that their posts be dissolved because of lack of revenue;

NOW, THEREFORE, BE IT RESOLVED by the subscribing posts of the American Legion, the Veterans of Foreign Wars (V.F.W.), the Amvets, the Disabled American Veterans (D.A.V.), Marine Corps League, Purple Heart, Spanish American War Veterans, the Jewish War Veterans, the Catholic War Veterans and the Gold Star Wives, that the New Jersey State gambling laws be amended at the forthcoming Constitutional Convention as to permit gambling for charitable purposes, provided such gambling is conducted under the sponsorship and supervision of only recognized, responsible organizations such as established veterans' organizations, fraternal societies, churches and charitable institutions; and

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Governor Driscoll, to each delegate to the Constitutional Convention and to Mayor Frank Hague and Mayor Designate Frank Eggers of Jersey City and to the Veterans' Alliance of Jersey City.

Homer Harkness Marine Corps League
General Mercer Chapter No. 33, Military
Order of the Purple Heart
Msgr. A. L. Adzema C. W. V. No. 621
All Saints Memorial Post
Hilltop Amvets Post No. 83
Hudson City Post No. 758, C.W.V.
Post No. 37, C.W.V. Jersey City
Post No. 465, Assumption B.V.M.
Gold Star Wives
Greenville Post No. 1170, C.W.V.
Greenville Amvets, Inc. N. J., Post No. 2
Hudson County Chapter C.W.V.
Member of the V.F.W.
Conception Post No. 1188
Chin Strap Post, 29th Div. Assn."

On motion made, seconded and unanimously adopted, the Chairman was authorized to request the Committee on Rules, Organization and Business Affairs to ratify the Committee's selection of Charles DeF. Besore to act as its counsel. The Chairman thereupon addressed the following letter to A. R. Gemberling, Chairman, Committee on Rules, Organization and Business Affairs:

"Dear Mr. Gemberling:

The Committee on the Legislative hereby requests the Committee on Rules, Organization and Business Affairs to ratify its selection of Charles DeF. Besore as its counsel.

Very truly yours,

(Signed) Edward J. O'Mara, Chairman,
Committee on the Legislative."

On motion made, seconded and unanimously adopted, the Chairman was authorized to request the Secretary of the Constitutional Convention to assign a page boy to this Committee. The Chairman thereupon addressed the following letter to Oliver F. Van Camp, Secretary, Constitutional Convention:

"Dear Mr. Van Camp:

The Committee on the Legislative hereby requests that a page boy be assigned to this Committee.

Very truly yours,

(Signed) Edward J. O'Mara, Chairman,
Committee on the Legislative."

On motion made and seconded, it was agreed that the rules for public hearings of this Committee be as simple as possible and should consist of a requirement that the speakers register their names and the names of the organizations, if any, which they represent, with the Secretary of the Committee prior to the commencement of the hearing, and that the speakers be called in the order in which they register; but that the question of whether limitation of time be imposed upon the speakers be left for decision until immediately prior to the commencement of the hearing, tomorrow morning, July 2. The question of further public hearings prior to the publication of a tentative draft of the Legislative Article is also to be deferred. The Committee unanimously agreed upon adoption of the proposed rules.

The Committee discussed, informally and tentatively, the provisions of the portion of the Constitution referred to it by the Constitutional Convention for consideration.¹

On motion duly made and seconded, the Committee was evenly divided, the vote being five to five, on the question of whether or not the provisions of Article IV, Section VII, paragraph 11, subparagraph 1, should be left without alteration. On the suggestion of Mr. Leonard, Mr. Besore was requested to prepare for the next meeting of the Committee a modernized version of the provision in question, for consideration by the Committee.

On motion duly made, seconded and unanimously adopted, the meeting recessed until 2:00 P.M.

* * * *

The meeting of the Committee on the Legislative reconvened at 2:00 P.M., all members being present with the exception of Mr. Camp. Mr. Charles deF. Besore was also present.

Mr. William H. Connell, of Montclair, representing the Motor Carriers Service Bureau, appeared before the Committee. He said he had appeared before the Committee on Taxation this morning and was referred by that Committee to the Committee on the Legislative. He said it would be impossible for him to appear at the public hearing to be held tomorrow, and requested that he might be permitted to make a statement at this time with reference to Article IV, Section VII, paragraph 11, subparagraph 7 of the present Constitution. On motion duly made, seconded and carried, Mr. Connell was heard.²

* * * *

CHAIRMAN: Your name and address, please.

MR. WILLIAM H. CONNELL: William H. Connell, 188 Bellevue Avenue, Montclair.

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."
² The transcript is inserted at this point for convenience.

CHAIRMAN: Do you represent an organization or appear as an individual?

MR. CONNELL: I represent the Motor Carriers Service Bureau, an organization formed about ten years ago to try to have the commuter rates of the Staten Island bridges extended to the Hudson River crossings. Shortly before the outbreak of the war, it was suggested that I discontinue the activities of the Bureau during the war and I have so discontinued it—have not been active since before the war. I would like to make a statement with regard to that part of the Constitution which deals with special legislation and would like to call to the attention of the Committee a report issued by the Port of New York Authority, New Jersey Joint Legislative Committee Hearing on Tolls.

The section that I want to refer to particularly is Article IV, Section VII, paragraph 11. It provides that the Legislature shall not pass private, local or special laws in any of the following enumerated cases and then goes on to enumerate the different cases where it shall not pass laws. The one I refer to is sub-paragraph 7: "Granting to any corporation, association or individual, any exclusive privilege, immunity or franchise whatever." What I wanted to refer to particularly was the Port Authority statutes. Under these statutes, the State surrendered its right to regulate tolls. It did that for a good purpose because it was done to facilitate the financing of the bonds of the Port Authority, but I do not believe the Legislature intended at the time to give the Authority such a free hand that it was going to discriminate in tolls.

The situation that exists at the present time is this: The Staten Island bridges have commuter rates that are used, bulk rates on the total traffic using the Port Authority facilities. The Hudson River crossings are restricted to single-trip tolls. The commuter fare for a passenger car is about 23 cents a trip, so that a man living in Staten Island and working in Newark, using his own car, can go for two trips for 46 cents, while a man living in Manhattan and working in Newark, using his car, would be forced to pay single-trip tolls of 50 cents, or \$1.00 a day. The man in Staten Island has the advantage over the man in Manhattan to the extent of the difference between 46 cents and \$1.00 a day fare.

CHAIRMAN: Is this a matter for the Constitution?

MR. CONNELL: I think it is the kind of thing the Committee would like to have called to its attention, to emphasize the necessity of trying to develop some kind of provision that would prevent these cases coming up in the future. That is the purpose of my appearance today. It is merely to give the Committee an illustration of the importance of this matter and, if possible, the importance of formulating some kind of rule to prevent these grievances from coming up.

CHAIRMAN: Have you a suggestion as to a proposed constitutional clause to remedy that?

MR. CONNELL: I can't say that I have thought just what language could be used. I was thinking more about the importance or desirability of eliminating the possibilities of unjust discrimination arising.

I refer to a resolution introduced by Mr. Hendrickson on March 11, 1940, to investigate tolls by the Staten Island Bridge, now said to be introduced in the New Jersey Legislature by Senator Toolan, Senate Resolution No. 5, June 3, 1940, that extended the scope of the investigation to include all facilities of the Port Authority. A commission was appointed, consisting of Senator Loizeaux, Chairman. Senator Toolan, Wilensky, representative from Passaic, C. Milford Orben and Bernard Vogel. That committee made a report which, on page 37, paragraph 5, says that it is advisable to re-examine into the subject about a year after the termination of the present emergency, to determine whether or not changed conditions may warrant a reduction in tolls.

(The Chairman asked about the report from which Mr. Connell was reading)

MR. CONNELL: I don't know whether this report would be useful or not. It is only an abstract that I have. You may obtain a copy from the Port Authority. (The name of the report is: "Report of the New Jersey Joint Legislative Committee, appointed pursuant to Senate Resolution No. 5.")

* * * *

On motion duly made, seconded and carried, it was directed that letter, dated June 27, 1947, addressed to the Constitutional Convention, Legislative Committee, by Kirk Brown of Montclair, concerning Article IX of the present Constitution, be returned to the Secretary of the Convention for reference to the proper Committee.

The Chairman announced that Hon. Robert C. Hendrickson would like to appear before the Committee next Tuesday morning, July 8, after adjournment of the meeting of the Constitutional Convention. On motion duly made, seconded and unanimously carried, the Chairman was requested to invite Mr. Hendrickson to appear at that time.

The Committee discussed at further length the provisions of the Article of the present Constitution referred to it by the Constitutional Convention for consideration.

Upon motion made, seconded and unanimously adopted, the meeting adjourned.

COMMITTEE ON THE LEGISLATIVE
Tuesday, July 1, 1947
CONFERENCE NOTES

The Committee concluded the consideration of existing sections of Article IV, except Section VII, paragraph 11.

Section VII, paragraph 11, sub-paragraph 1:

The vote being five to five on the question of whether or not the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 1, should be left without alteration, Mr. Besore was requested to prepare for the next meeting of the Committee a modernized version of the provision in question, for consideration by the Committee.

Sub-paragraph 2:

The Committee was of the opinion that the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 2, be retained without change, Mr. Jorgensen dissenting.

Sub-paragraph 3:

It was unanimously agreed that the language of Article IV, Section VII, paragraph 11, sub-paragraph 3 be retained, with the exception that the word "municipalities" be substituted for the word "towns."

Sub-paragraph 4:

It was unanimously agreed that the provision of Article IV, Section VII, paragraph 11, sub-paragraph 4, be retained without change.

Sub-paragraph 5:

The Committee was of the opinion that the provisions of Article III, Section VI, paragraph 8, sub-paragraph 2, of the Proposed Constitution of 1944 be substituted for the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 5, of the present Constitution, with the exception that the word "or" be inserted before the word "tenure," and the words "or pension" be eliminated. Mr. Cavicchia passed the vote on this sub-paragraph.

Sub-paragraph 6:

The Committee was unanimously of the opinion that the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 6, be retained without change.

Sub-paragraph 7:

The Committee was unanimously of the opinion that the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 7, be retained without change.

Sub-paragraph 8:

The Committee was unanimously of the opinion that the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 8, be retained without change.

Sub-paragraph 9:

The Committee was unanimously of the opinion that the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 9, be retained without change.

Sub-paragraph 10:

The Committee was unanimously of the opinion that the provisions of Article IV, Section VII, paragraph 11, sub-paragraph 10, be retained without change.

It was unanimously agreed by the Committee that the provisions of Article IV, Section VII, paragraph 7 of the existing Constitution be incorporated in the provisions of Article IV, Section VII, paragraph 11 of the present Constitution, with appropriate change of introductory language.

It was unanimously agreed that the provisions of Article III, Section VI, paragraph 8, sub-paragraph 3, of the Proposed Constitution of 1944 be incorporated in the provisions of Article IV, Section VII, paragraph 11 of the existing Constitution, with the exception that the words "except as expressly provided in this Constitution" be eliminated.

It was unanimously agreed that the paragraph at the end of Article III, Section VI, paragraph 8 of the Proposed Constitution of 1944 be substituted for the paragraph at the end of Article IV, Section VII, paragraph 11 of the existing Constitution.

It was agreed by the Committee, Mr. Cavicchia dissenting, that the attention of the proper Committee of the Convention should be called to the possibility of rephrasing any of the foregoing paragraphs without changing the sense thereof.

CHAIRMAN: That concludes our discussion of the existing provisions of the Legislative Article. We will consider the following:

1. Provision for the creation of a legislative council;
2. Provision in the Constitution to regulate lobbying;
3. Initiative and referendum.

(The meeting adjourned until 2:00 P. M.)

* * *

(The meeting reconvened at 2:00 P.M.)

The Committee was of the opinion that the Chairman of this Committee should inform the Chairman of the Committee on the Executive, Militia and Civil Officers that, in its opinion, a provision should be incorporated providing for an automatic, supplemental session of the Legislature, to be held within a definite period of time after the expiration of the time limited for the Governor's action on bills after *sine die* adjournment; that the function of the Legislature at the supplemental session should be limited to taking action on bills which may have been vetoed by the Governor since the *sine die*

adjournment by the Legislature. This is on the assumption that a constitutional provision will be enacted requiring definite action by the Governor on all bills within a specified time after *sine die* adjournment. It was requested that the Committee on the Executive be kind enough to submit a draft of the proposed Article to this Committee, when it is drafted.

The Committee was of the opinion that there should be no constitutional provision setting up a legislative council, Mrs. Sanford not voting. Judge Lance pointed out that the provision for compensation of legislators should, possibly, be broad enough to allow for additional compensation for members of a legislative council which may be created by the Legislature, should the Legislature take such action.

It was unanimously agreed by the Committee that the Constitution should not contain a provision concerning lobbying, but that the Convention should recommend to the Legislature that the proper regulation of lobbying should be accomplished either by legislative enactment or by the rules of the Senate and General Assembly.

The reasons for the Committee's conclusion are as follows:

1. The Constitution should be limited to a statement of general fundamental principles of government, of which the regulation of lobbying is not, in the Committee's opinion, one.
2. It is impossible to define lobbying within the limits of a proper constitutional provision.

Consideration of the 1944 Proposed Constitution

It was unanimously agreed by the Committee that the provisions of the first clause, Article III, Section I, paragraph 3 of the proposed Constitution of 1944 should be incorporated in the new Constitution, with the exception that the words "and organize" should be inserted after the word "January," and the balance of the clause should be stricken.

It was unanimously agreed by the Committee that the provisions of Article III, Section I, paragraph 5 of the proposed Constitution of 1944 should be incorporated in the new Constitution, with the following change: That the words "until the beginning of the next legislative year" be inserted after the word "them" on line 4.

It was unanimously agreed by the Committee that the provisions of Article III, Section III, paragraph 3, of the proposed Constitution of 1944 . . .¹

It was the unanimous opinion of the Committee that the tentative determination heretofore made with respect to the provisions of Article IV, Section V, paragraph 1, be further altered by incorporating therein the provisions of Article III, Section IV, paragraph 6

¹ The Conference Notes are silent on the decision.

of the proposed Constitution of 1944, eliminating the proviso at the end of the clause.

It was the unanimous opinion of the Committee that the provisions of Article III, Section V, paragraph 7 of the proposed Constitution of 1944 be eliminated.

* * *

MR. WESLEY L. LANCE: In the event the Governor is given the power to succeed himself and to continue to select the judges and prosecutors of the 21 counties, and his term is extended and, perhaps, he is given a cabinet form of government, with appointees who serve at will or whose functions may be re-allocated, I do not favor giving the Governor the exclusive appointing power for all practical purposes that this section would give.

* * *

The Committee was of the opinion that the provisions of Article III, Section VI, paragraph 1 of the proposed Constitution of 1944 be incorporated in the new Constitution, with the exception that it should not relate to the fiscal officers of the government. Judge Lance dissents for the reasons he has expressed on the record, and Mrs. Hacker reserves her vote.

It was unanimously agreed by the Committee that consideration of the provisions of Article III, Section VI, paragraph 3 of the proposed Constitution of 1944 be reserved until after the public hearing.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Wednesday, July 2, 1947

(Morning session)

(The session began at 10:00 A. M.)

PRESENT: Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Morrissey, O'Mara, Proctor and Sanford.

Chairman Edward J. O'Mara presided.

MR. EDWARD J. O'MARA, CHAIRMAN: This meeting of the Committee on the Legislative will come to order. May I first extend a very cordial welcome to all who have come here to help us by making known their views.

Anyone who desires to speak will please register with the Secretary of the Committee, Mr. Leonard. The speakers will be called in the order in which they have registered, and if anybody has not registered we request them to do so. There are ten speakers already registered.

I think the Committee feels that we should not impose a specific time limit on the speakers at this time. Of course, we would appreciate it if you will confine your remarks directly to points which, under the rules, are referred to this Committee for consideration and to make your remarks as complete as you can, consistent with what you feel is a full presentation of your point of view.

The first speaker registered is Mr. Curtis C. Caldwell. Mr. Caldwell, will you please take the chair?

MR. CURTIS C. CALDWELL: Mr. Chairman, ladies and gentlemen of the Legislative Committee:

I come before you to speak on two matters—one on a constitutional provision for excess condemnation, and one on zoning, zoning at the county level. I think if I tell you briefly some of the points that have come before me in my experience, and I'll name only one in each case, you'll get some idea why we, the county engineers, feel that the counties should have further powers than they have at the present time.

MR. CHRISTIAN J. JORGENSEN: Would you mind telling us whom you represent?

MR. CALDWELL: I represent the County of Essex and also my fellow county engineers of whom I have spoken.

MR. JORGENSEN: Are you the County Engineer of Essex County, Mr. Caldwell?

MR. CALDWELL: I am the County Engineer and Supervisor of Roads of Essex County.

The 1944 proposed revision carried a paragraph that read as follows:

"Any agency or political subdivision of the State or any agency of a political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, place, improvement, or use, may be authorized by law to take or otherwise acquire the fee or any other lesser interest, and may be authorized by law to take or otherwise acquire a fee in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, place, improvement, or use; but such taking shall be with just compensation."

CHAIRMAN: That clause, Mr. Caldwell, is identical with the clause which was known as Article III, Section VI, paragraph 6 of the proposed Constitution of 1944. Is that right?

MR. CALDWELL: That is right. That is the one. Recently, in acquiring property along Bloomfield Avenue in the City of Newark, we found that we were taking property and leaving little jagged ends of property, and had we had the power of excess condemnation we would have had the power of controlling those little odds and ends of property that were left over after we had acquired it. We would have controlled the development of it and been able to sell it to the adjoining property owner, or we could have acquired additional property to make sufficient development to give the business development along Bloomfield Avenue a chance to go along in a healthier manner.

CHAIRMAN: Before you leave that subject, Mr. Caldwell, may I ask a question, please? Precisely what do you mean by "excess condemnation"? Do you mean the right to take under eminent domain property which is not necessary for public use?

MR. CALDWELL: Yes, sir. I have nothing further to say along that line. Are there any other questions along the line of excess condemnation?

MR. ARTHUR W. LEWIS: Mr. Caldwell, do you propose that you would have the right, or should have the right, as a governmental agency to take a fee or lesser than a fee interest?

MR. CALDWELL: Yes.

MR. LEWIS: To take a fee?

MR. CALDWELL: Yes.

MR. LEWIS: And taking a fee, suppose for some reason or other you no longer have the use of that particular property so taken; would the Highway Department then have the right to sell that property?

MR. CALDWELL: That's what I think should happen, yes. May I point out that along Bloomfield Avenue—now this is just a specific instance; Bloomfield Avenue is a diagonal road and as such

it cuts at an angle all properties that are laid out on a regular rectangle system, north, south, east, and west lines. Where there are properties that give us a sort of saw tooth effect at the back line, if we could have had the power of excess condemnation we could have gone to the property that was still in back of that and we could have purchased property to make a sufficient lot, instead of leaving it to the haphazard development of the future. I think Mr. Cavicchia is familiar with that area.

MR. DOMINIC A. CAVICCHIA: I'm familiar with the area, yes. I understand that problem.

May I ask this, Mr. Caldwell? It seems to be a question as to the amount of the estate which is taken by condemnation when there is condemnation for highway purposes. Isn't it true, generally speaking, that the easement only is obtained, and that there is a reverter after the use has been terminated?

MR. CALDWELL: That I understand is generally true of the old roads. It's a legal matter and I'm not up on it, Mr. Cavicchia—whether under the condemnations we have today it is the same old system or just an easement for public roads. That I don't know.

MR. CAVICCHIA: We're in doubt, and I don't think you can get very much from reading the cases, but there seems to be a question as to whether the fee in the sense of the full estate for all time is acquired upon condemnation. What I'm leading to is this: Doesn't this excess condemnation proposal cure that, because you speak of the fee or easement here?

MR. CALDWELL: I don't know. I don't know enough about that angle of it. May I say this: The idea of excess condemnation, from my own point of view, is to be able to control the future development. It would be my idea that any excess over the needs of the highway should be disposed of.

CHAIRMAN: Mr. Caldwell, is it your position that the clause referred to as Article III, Section VI, paragraph 6, of the proposed Constitution of 1944 would completely meet the requirements of what you advocate?

MR. CALDWELL: I believe it would.

CHAIRMAN: Do you think that if a right of excess condemnation were granted there ought to be any circumscription of that right, or do you think there ought to be a general right of what you call excess condemnation? In other states that have it, is it circumscribed by constitutional provision or circumscribed by the legislative enactment under the Constitution?

MR. CALDWELL: Well in some of the other states that have it, I believe they control that, control the extent of that, but as I understand it, this is a constitutional provision that has nothing to do with the final legislation necessary to put it into effect.

MR. LEWIS: Mr. Caldwell, do you now feel that if there be a right of excess condemnation there should be a reverter in case the use is no longer needed for the public agency?

MR. CALDWELL: Oh, no . . . Do I understand that when we take excess property there should be a reverter? No, my idea of the excess property is that it should be disposed of.

MR. LEWIS: Would not that open the door to abuses?

MR. CALDWELL: Well, I don't know. I think that probably needs some study. I'm giving you the effect of what is happening at the present time and what we would like to see done. Now, whether this paragraph that was in the 1944 draft will do the work, I don't know. I thought it would. But I present the problem to you of what we have to face, and I think it's for the good of the public that we can have an opportunity of exercising some control over that future development.

CHAIRMAN: Are there any further questions?

MR. HAYDN PROCTOR: As I understand it, you want this excess property in order to beautify the surrounding land to make it one continuous portion?

MR. CALDWELL: Not necessarily. It is not only for a parkway development. It is to control the development of the property itself. It may be a business property, and if you leave small ends after acquiring adjacent property and leave them to the haphazard development of the property owner who may have tried to hold up adjacent property owners, it seems to me you are going to have quite a headache there for the future. It's my idea that excess condemnation should be permitted, in order to exercise some degree of control and permit proper development. Now, whether it's going to be for beautification, or whether it's going to be for resale for business purposes, I wouldn't know.

MR. PROCTOR: Resale for business purposes would mean that you would be condemning private property for private use. If you are going to resell it for business purposes, that would put the city in the real estate business—condemning a piece of property and then turning around and selling it to an individual.

MR. CALDWELL: To some extent that would put us in the real estate business.

MR. PROCTOR: It runs counter to the general Constitution, that you can't condemn private property for private use.

MR. CALDWELL: Aren't there methods of controlling resale so that it is not dictated? Doesn't it have to be by auction or something of that kind?

MR. PROCTOR: Well, even so, whether it's auction or not, as I understand it the individual is entitled to use his property in any way he pleases, so long as he maintains it within the zoning re-

strictions, and no one can take it away from him except by eminent domain. And eminent domain means that it can only be used for a public purpose, and if that public purpose ceases the individual should retain his property.

MR. CALDWELL: Well, it's my thought that proper control in the interest of the public is a proper usage.

MR. PROCTOR: To resell it to a private individual?

MR. CALDWELL: To a private individual, or to whoever can use it, yes. Now, gentlemen, I've given you a problem that I see from an engineering point of view. I apparently am here among a bunch of lawyers and I don't know how to argue the point with you.

CHAIRMAN: You are Daniel in the lion's den.

MR. CALDWELL: I've given you my point of view on what I want to achieve. Maybe I'm not expressing it particularly well, and at the same time I know what I want to get, what I want to correct in the present conditions. I'd like to work that thing out.

MR. PERCY CAMP: Mr. Chairman, may I ask a question of the witness?

CHAIRMAN: Yes, Mr. Camp.

MR. CAMP: Being somewhat familiar with the problem as a municipal attorney, I think I know what the witness has in mind, and that is that when you condemn a piece of property for public use you frequently take 90 percent of a person's property and leave only the rear 10 or 12 feet, which he can't make any use of for any practical purposes. He therefore puts up a hot dog stand or makes some other obnoxious use of it. That is a real problem. However, with reference to taking a person's property and reselling it, perhaps what the witness has in mind could be controlled to some extent by zoning.

MR. CALDWELL: That's the next point that I'm going to bring up. I thought excess condemnation would be helpful in that way. That's only one point that I brought up.

CHAIRMAN: Does any member of the Committee desire to ask any further question on excess condemnation? If not, Mr. Caldwell, you might proceed to the zoning proposition.

MR. CALDWELL: The 1927 amendment on zoning states: "The Legislature may enact general laws under which municipalities other than counties . . ." Why they put the finger on the counties I never knew. That's the part that I object to in the present constitutional provision, the amendment of 1927.

CHAIRMAN: What is the constitutional provision by paragraph; do you know?

MR. CALDWELL: Yes, that is Article IV, Section VI, paragraph 5, of the New Jersey Constitution.

CHAIRMAN: What's your position in regard to that?

MR. CALDWELL: I think the county should be permitted some powers for zoning. Recently we made an extensive survey of the highway system of my county—and I know it is being done in other counties as well—and we find that a great many of our highways are not wide enough for the anticipated future traffic volume. We are going to have to widen them, we are going to have to acquire property, but it is not practical to acquire all the property at one time. To protect ourselves against inflation, against new buildings being put in over a line that we may want for the future, we'd like to be able to establish building set-back lines along county highways.

MR. CAVICCHIA: Mr. Caldwell, I understand that, and it may be a good idea, but as the provision is worded in the 1944 proposal, unless there were a limitation upon the counties, wouldn't there essentially be a conflict in the exercise of the zoning power as between the counties and municipalities?

MR. CALDWELL: There might be. I know there is always that thought. In my own county I notice less and less feeling about county encroachment on municipal rights. There is a tendency to cooperate more and more. However, I am asking that if possible some authorization be put into the Constitution so that legislation may later be passed to permit the county to act, possibly in the municipalities where there is no planning board. I don't know how that might work out later. In the Constitution itself, I feel that the county should not be excluded from that right.

MR. JORGENSEN: Mr. Caldwell, would you not then necessarily inherit a conflict between the exercise of the right by the county body and by the municipal bodies?

MR. CALDWELL: If it is confined to county highways, I wouldn't think so.

MR. JORGENSEN: Is it necessary that you zone county highways?

MR. CALDWELL: Zoning to protect future widening. I think the public needs some protection.

MR. JORGENSEN: If you want to widen a county highway, you can do that by condemnation, can you not?

MR. CALDWELL: That is right.

MR. JORGENSEN: Then why is it necessary to impose the county zoning regulation upon the municipality which the county highway traverses?

MR. CALDWELL: To protect us against the future. We cannot acquire all our widening rights of way at one time. Buildings are going up all the time, and we're trying to keep in touch with the local building inspectors to keep us advised of where these buildings are going. But that is a hit-or-miss affair. We think the public

should be protected against the future development along a county highway because, after all, the municipality is not paying any attention to that highway. We are—that is to say, the county is. We're supposed to be able to tell what the future width down the lanes of traffic should be on a given highway.

MR. CAVICCHIA: Mr. Caldwell, your interest then extends only along county highways?

MR. CALDWELL: Yes, sir.

MR. CAVICCHIA: If we could work out that limitation, would that be satisfactory, so as to do away with any possible conflicts between counties and municipalities?

MR. CALDWELL: Yes, but wouldn't that be a matter of later legislation—I mean the actual legislative bill that would get put into being?

MR. CAVICCHIA: I think not. I think that it should be in a basic provision which grants to counties the same rights as it grants to municipalities. It would not be cured by legislation. Legislation may be enacted for the time being, but if the extent of the legislation is not in accord with the extent of the constitutional provisions, then eventually there must be conflict.

MR. CALDWELL: Well, I was thinking I didn't want to pull the curtain down on possibly the other departments—building department, etc.—that might have an interest in it also. I am interested, of course, in my county highways and I'd like to have that situation fixed.

MR. WESLEY L. LANCE: Mr. Caldwell, I can see a certain abuse there. The county might build a county highway at a certain width for the immediate present, and figure that perhaps 25 years from now it would want to have a wider highway, which is perfectly possible. Then it would combine with that the power to restrict the use on either side, which for all practical purposes would give it the privilege of very cheap eminent domain in the future.

MR. CALDWELL: You would still have to pay for the land when you took it.

MR. LANCE: But perhaps you would pay a great deal less for it, zoned as it was rather than being free for any use whatsoever.

MR. CALDWELL: That's one reason I think it should be done. I don't think you should permit building over a line, over a certain given line that is going to be needed in the future by the public. By the time you are in a position financially to purchase a property, you are faced with high construction costs that have to be met.

MR. LANCE: Wouldn't your problem be solved by granting the privilege of excess condemnation, coupled with the concept that the title obtained by the municipal unit would not be a fee, but

rather an easement for public travel? This would allow you to take not only enough land for the immediate present but also enough for future development. If the municipal unit didn't use it for a road or a similar public purpose it would eventually revert, and this would be a solution which would solve both the problem of the governmental unit and also the individual.

MR. CALDWELL: No. I don't get the point you make on that. Here is the point where, without immediate outlay of money, you are controlling the development of a highway. Municipalities do that at the present time, where they have a planning board. If they have developed a master plan, and it is accepted by the governing body, it goes into effect and that controls the development and the building lines of all their highways. Now, all municipalities do not have planning boards, nor do all those which have planning boards have their plans officially adopted. So I think that for the protection of county highways, the county should have some right to control the encroachment on the highway.

MR. JORGENSEN: Mr. Caldwell, would you mind telling us how, as a practical matter, zoning is going to aid you in that respect?

MR. CALDWELL: Yes. I have several streets now; I know the widths I need. I couldn't possibly produce my plans and have the land acquired before there would be encroachments, unless I can establish a building set-back. At the present time it is a practical matter, for instance, in the City of Newark. South Orange Avenue—those of you who know it in Essex County know that it goes from the City of Newark right on out over to Morris County and to points west. It is 100 feet wide out in the rural areas. Where you need the width, in the City of Newark, it is 66 feet wide. We are just finishing a two million dollar acquisition on Bloomfield Avenue. We can't immediately go into the acquisition to widen South Orange Avenue from 66 feet to 100 feet in the City of Newark. Therefore the Central Planning Board of the City of Newark has established its set-back line for us in our interest, if you please, on South Orange Avenue, but that is happening in the City of Newark where they have a planning board. Other municipalities may not have planning boards.

We decided to protect ourselves on Belleville Avenue, in the Town of Belleville, and Belleville went along with us. That has been attacked and it has been thrown out. Because they had no planning board, they had to purchase it at the time.

MR. JORGENSEN: Then do I understand that what you want is authority for a county to establish a set-back line for future possible development and widening of the county highways?

MR. CALDWELL: Well, that's what I want particularly, yes. What I want is a change in the 1927 amendment where you have

the phrase "other than counties." Let the counties come in and protect themselves.

MR. LEON LEONARD: Well, Mr. Caldwell, if you were attempting to develop a road or highway that you spoke of with a set-back line, and you attempted to accomplish it by zoning, how would you meet the problem of an existing property that is within the set-back line?

MR. CALDWELL: You can't. That's an exception that you've got to permit for the life of that building. But the point is that for future building you cannot go over a certain given line that's been established.

MR. LEONARD: Well, of course, if there were one building in a stretch of a mile and you had a set-back line on both sides of it, you couldn't widen your highway without in some manner condemning that existing building.

MR. CALDWELL: Oh, yes, that is absolutely true, but I am then buying old buildings, not new buildings that are encroaching.

MR. LEONARD: My point is that you are going to attempt to do that by zoning.

MR. CALDWELL: Well, I don't know under what other category that would be. It's under the zoning law that I believe the municipalities establish their set-back lines.

MR. LEWIS: Mr. Caldwell, your proposition in substance, then, is that counties should have the right to condemn for future use without just compensation until you are ready for the use, and you do that through the medium of zoning.

MR. CALDWELL: That's right.

CHAIRMAN: Does any other member of the Committee desire to ask Mr. Caldwell any questions?

MR. CAVICCHIA: Only this, Mr. Chairman. I understand Mr. Caldwell to say that there are other county engineers who have the same views as he does. I think we ought to note that on the record.

CHAIRMAN: Maybe Mr. Caldwell would note on the record what other county engineers share his views.

MR. CALDWELL: Yes. I've had discussions recently with several of them: Frank Raddigan of Hudson County, Ross McClave of Bergen County, Michael of Union County, Herb Fleming of Middlesex County, Harry Harris of Mercer County, and Herb Taylor of Camden County.

CHAIRMAN: Are they all in agreement with the views that you have expressed.

MR. CALDWELL: They are all in agreement with me. Some of them can speak for their freeholders and some can't, but we're talking from the professional viewpoint. From the engineer's viewpoint, that is something we believe to be very desirable.

CHAIRMAN: Thank you very much for your attendance. We've gotten a great deal of benefit out of it.

Now, the next speaker listed is Mr. John F. Evans. Mr. Evans, would you please state for the record what your name is and whether or not you appear in a representative capacity, and if you do, for whom you are appearing?

MR. JOHN F. EVANS: My name is John F. Evans, and associated with me is Mr. George J. Miller, Registrar of the New Jersey Proprietors. Mr. Miller and I have written a brochure on the subject of municipal government and its relation to the Constitution, a copy of which has been sent to every delegate.¹

I was city counsel of the City of Paterson for nearly seven years, resigning about a year ago, and am now counsel of the Plant Management Commission of the City of Paterson. Assisting me in this work voluntarily is Mr. Arnold Frey, head of the firm of Hawkins, Delafield and Wood, who are specialists in municipal government all over the United States and a firm frequently called upon to approve bond issues of different municipalities from the Atlantic to the Pacific Ocean. We are also being assisted from a technical standpoint, in the technical phrasing of any clauses to be suggested, by Mr. John Ockford of the Law Revision Committee of the State of New Jersey. Mr. Ockford also is legal advisor of the Senate of the State.

We are working in conjunction with the State League of Municipalities. Mr. James J. Smith, its secretary, is here today. When I was city counsel of Paterson, I was for a term chairman of the Legislative Committee of the League, and we believe that the League is in general sympathy with the purposes of our work and the principles we have enunciated, which I will refer to briefly here this morning. In fact, Mr. Smith just advised me that the League supports those objectives. On Monday afternoon, next week, there will be a meeting at the League to go over this matter more in detail. I have been invited to that meeting and, I believe, Mr. Miller as well, at which time a statement, as I understand it will be prepared and filed with this body as to the specific recommendations of the phraseology of the clauses to be inserted or to be proposed for the new Constitution. I would ask leave that we be permitted to file such specific clauses by next Tuesday morning.

CHAIRMAN: As long as we have them by Tuesday I think they can have full consideration, Mr. Evans.

MR. EVANS: Personally, Mr. Miller and I have no axe to grind. This is a labor of love. We are interested in good government. We are what you might call idealists on the subject, and we believe that a tremendous improvement can be made in our government if we

¹This brochure, *The Historical Infirmities in Our State Constitution*, appears in the Appendix to these Committee Proceedings.

lay an adequate foundation for it in our Constitution. We are not in favor of any rigid clauses on specific matters, but we believe that a declaration of general principles, upon which we can build a system of good local government in New Jersey, is in order. I don't say it's not good now, but I think it can be tremendously improved.

One of the principal difficulties in getting good government which people understand, which the officers in municipal government and the governing authorities understand, and which the people understand, is the fact that it is impossible under our present law to develop municipal government on any system of general principles, any logical pattern based upon principles. Now, all our other branches of law are based upon certain principles. Contract law, agency law, even private corporation law, have certain basic principles along which the law is developed, and the details naturally flow out of or are provided for in accordance with those general principles. That is impossible in municipal law due to the theories that have been promulgated by the courts over the last 100 or 125 years, and which are reiterated in frequent decisions in this State, that nothing can be implied in any grant of power to municipalities. The courts do say that anything necessarily implied is all right, but in applying such a principle we find that any power, no matter how trivial, any detail, no matter how trivial, has to be expressly and specifically stated by legislative enactment.

For example, if a city wants to acquire land, even by private purchase, for parking purposes—that is a small, routine thing under our present-day requirements—specific legislation has to be obtained to empower the local body to go through with any such program. A municipality—I pointed this out in our article—wants to appoint a deputy city clerk to take care of things when the clerk is away or sick, or the city clerk might be tremendously overburdened with work, he might have to sign a lot of papers, and it's a sensible thing to have a deputy clerk under certain circumstances in cities that require it. The courts have said that will not be allowed unless the Legislature specifically says that cities of that particular classification may appoint a deputy city clerk—and in just that express language. The Legislature can't provide for it by saying the municipality may appoint subordinate officers wherever required, but there must be that specific statement: municipalities of the class in question may appoint a deputy city clerk.

Now, we don't object, and we think it is right, that the State should provide the standards and the framework of government. The Budget Act, the Bond Act, the Local Government Act are all good acts and we don't want to lose the good that we have in our present system. There is much good in it. But we do believe as a matter of principle that the Legislature should be enabled to pro-

vide for government, not only by general law, but according to general principles. No development of municipal law is possible until the Legislature gets that right, which the court denies it at the present time. In order to overturn such a deep-seated theory, which in our opinion is absolutely unscientific, it will be necessary to have a provision in the Constitution. Nothing short of that will ever overturn it.

I was talking to an assemblyman here the other day and he said: "John, if we could only be relieved of all this mass of detail that is thrown at us every year, we would be able to devote our attention to more important things. We are harassed and pestered to death by local officers from all over the State who have to have laws passed to cover every conceivable triviality and detail. If that burden could be lifted from our shoulders, it would be a great boon to the Legislature and would help to elevate it to its proper level."

Mr. Ockford, the technician for drafting of legislation, said: "Mr. Evans, this should not even be a controversial point. The municipality should be allowed to provide for its own requirements under the standards provided by the State, in a way that is not inconsistent with state law—not that which is expressly authorized by state law, but that which is not inconsistent with it or repugnant to state law."

Another phase of this . . . The State Constitution at the present time provides that laws affecting municipal and local affairs shall be general, which is a pretty good provision. Incidentally, that provision is contrary to the way the courts interpret the law. The Constitution says the laws affecting municipal affairs must be general and the court says that the laws affecting municipal affairs must be detailed, so that in the sense that the word "general" is opposed to the word "detailed" there is an absolute conflict between our present Constitution and the way the courts interpret laws affecting municipal affairs. That rule, by the way, was taken from early U. S. Supreme Court decisions in construing the Federal Constitution where there was a grant of specific power. The early courts adopted a narrow construction of the Federal Constitution and held that very few powers were implied and that the Federal Government was limited to a grant of 17 or 18 powers. They were not very liberally construed in the first instance, but, of course, you all know that the United States courts have gone a long way from that early doctrine.

The state courts of New Jersey adopted the same doctrine and applied it to the so-called grant of power to municipalities. They still follow the very narrow type of construction in interpreting those powers, in a manner similar to that followed by the federal courts many years ago. Most courts of most states have gotten

away from those principles, or from that theory of very narrow, legalistic construction. Most states have found that it doesn't work well. Of course, nobody could ever address a court and attack a decision by saying that it doesn't work well, because such an argument doesn't hold water in court. You have to state your argument based upon some precedent. That's what we are confronted with in New Jersey, and that has to be changed by constitutional amendment.

I want to get to another point before I finish, and that is this: If you take the word "general" as opposed to the word "special" and interpret the present Constitution to the effect that only general laws can be passed with reference to municipal affairs and special laws cannot be passed, there is a defect in the application of that rule because there are many truly special cases—and I don't mean cases of triviality or cases that are detailed. There are important special conditions affecting various municipalities of this State. When I say "special" they are "special" in the sense that they apply only to one particular municipality and do not apply to other municipalities, so that it is impossible to apply any uniform rule to such a situation.

I'll give you an illustration. Some years ago the Morris Canal was abandoned and the City of Newark and other municipalities wanted to make public use of that canal and use it in part for a highway, I believe. I don't know all the details, but it was a big public improvement. Strictly speaking, that, of course, had to be authorized by the Legislature. It was a specific condition, but the Legislature truly had no authority to deal with it under our Constitution because it was a special case. There was a vacuum. There was no way of providing for that situation except by calling experts together, and there are very few of them in this State who can handle that particular problem of writing a special law in such a manner that it would be called general law in the courts.

CHAIRMAN: If I may interrupt, there are a lot of experts on that.

(Laughter)

MR. EVANS: That's what actually happened. They wrote the law. They called it a general law, in language, but it was actually a special law. It had to be done for the public benefit . . . That provision in the Constitution should be changed to eliminate that vacuum and permit action to be taken where it should be taken because applicable to truly special conditions.

Paterson had the same situation. We had the Society for the Establishment of Useful Manufactures which Alexander Hamilton founded in 1791. The corporation was given a perpetual municipal tax exemption of up to four million dollars of ratables which

withstood every legal attack. It constituted discrimination among the taxpayers in the City of Paterson up until the time it was corrected a few years ago. The corporation owned all the water rights of the Passaic Falls. That's on the Passaic River, and the Passaic River was a very important natural resource for the City of Paterson. The Society had a hydroelectric plant there that serviced a number of its mills and other mills in the vicinity. It was not a public utility because it just serviced a group of maybe 20 or 30 mills in the immediate locality, but there were special conditions.

The Society for Useful Manufactures was going out of business, its stock was up for sale. The City of Paterson was confronted with the situation as to whether such valuable rights were going to get into private hands, or whether it could utilize the opportunity to gain control and abolish that pernicious tax exemption of four million dollars and get some control over the waters of the Passaic Falls—incidentally, the Passaic Falls are located in the City of Paterson—and at the same time control the hydroelectric plant so that those industries would continue to function in the old mills around it. We had to do the same thing as Newark. It was a special condition, so we had to have it covered. The Constitution, in effect, prohibited our covering it. It was a vacuum, so we had to get the technicians together. We drew a couple of general laws that were both general and special, but they were sufficiently general to pass the scrutiny of the court.

Now we come to the operation of the hydroelectric plant, which the City of Paterson necessarily has to operate, and we come back to an illustration of the trivial. The Plant Management Commission which operates that property, having sold all the mills for enough to pay the purchase price, has to take deposits . . . You will pardon me for mentioning such a trivial thing, but it will show how ridiculous this whole subject is . . . They have to take deposits from the customers. That is in line with good business practice . . . By the way, I want to say I'm not only a lawyer, but I'm a businessman. I am president of the Richmond Piece Dye Works and the Fairlawn Finishing Company, so that I am looking at this question not only from a legal standpoint, but also from a business standpoint . . . We have to take deposits as security for running accounts, and when we take deposits the customers naturally ask for interest on their deposits, so we devised a system under which they are trust moneys when they are received. We thought it would be a good plan to invest those trust moneys in U. S. Government bonds so that we would derive enough income to pay the interest on the deposits.

Well, we have a very alert auditor who immediately ran down to the Local Government Commission. Although I have a great

deal of respect for Mr. Darby—I think he is a blessing to our State—nevertheless he followed the general rule and said, “Well, where is the specific authority in the law to accept deposits and to pay interest on them, and to put the proceeds of these trust funds in United States Government bonds?” I said, “It is implied in the power contained in the statute to operate a hydroelectric plant, because that is one part of the operation of the plant.” “Oh, no,” he said. “You will have to have it specifically spelled out.” So next year I’ll be back to the Legislature with an administrative act of the sort which we can have passed, but it adds to complexity of the law. The Legislature will no doubt go along with it, but it is a ridiculous thing that we have to go to the Legislature to ask for it. I took issue with Mr. Darby and he said, “I don’t think the Attorney-General would rule that way.” He walked across the street to the Attorney-General, and the Attorney-General did rule that way.

MR. CAVICCHIA: Mr. Evans, are you contending now for the elimination of the provision which forbids the passage of any special, local or private law regulating the internal affairs of towns and counties?

MR. EVANS: No, I am not opposed to that principle, but I am in favor of a modification to eliminate the vacuum. I would like to see the Legislature empowered really to deal with bona fide and valid special conditions. It doesn’t have the authority to deal with them at the present time except by indirection, in the manner that I’ve described. I wouldn’t say that you should eliminate that provision in order to permit the Legislature to pass a tenure act to cover John Jones in Pennville or Burlington or some other place, which it does anyhow, by a certain type of classification as you know. I have seen it done in my own town. That’s a special act, too; that is the kind of thing that ought not to be permitted unless tenure is developed on general principles and applied all over the State to situations of genuinely like character. We should get the word “special” actually defined to what it really means and prohibit special laws that ought to be uniform and which could be generally applied; but we should also provide for bona fide special conditions that are peculiar to one municipality and allow the Legislature to deal frankly and openly with such a situation.

MR. CAVICCHIA: Who is to be the judge as to whether conditions are peculiar to the municipality, Mr. Evans?

MR. EVANS: I’ll admit that we are confronted with the difficulty of not knowing how the courts are going to construe some of these things, because the courts up to this time, in my opinion, have not had a true appreciation as to the principles actually involved. Nevertheless, I think it should be done. Every important writer

on municipal government thinks it should be done. I refer you to your own report here that was prepared by Mr. Henry W. Conner, Bureau of Municipal Research, Inc., at the request of Sidney Goldmann, chairman of the Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention of 1947. This report is an official document available to everybody here, and I hope that you will all get a copy of it and read it because it is complementary and supplementary to what we have written. He points out the very vacuum that I've described and shows how it has been corrected in other states and recommends that it should be corrected in this State. We are one of the few states that originally enacted that particular constitutional amendment, but did not later modify it when it failed to work in the type of situation I have been discussing: the Morris Canal in Newark, and the Society for Useful Manufactures in Paterson.

MR. CAVICCHIA: Mr. Evans, you have mentioned three or four isolated cases in support of your case, but isn't it true that this provision in the Constitution, I think put in there in 1875, by and large is a protection to the municipality?

MR. EVANS: To an extent it is a protection, but to an extent it hampers the Legislature and requires the Legislature to adopt a hypocritical act that is really special in its effect, but which is couched in general language. That element, I think, should be corrected. I think it can be, and most other states have done so.

MR. CAVICCHIA: Of course, the answer is that you have had legislation which has empowered those municipalities to do the very thing you say they were prohibited from doing.

MR. EVANS: There are only about three men in the State who can draw that kind of a law, and that brings me to another point. All these laws that are yearly passed by the Legislature, dealing with these administrative matters that should not rest on the Legislature at all, make it impossible for people to understand what municipal law is. It is not developed on any general principles and it is only what the Legislature happened to say it was in specific language. You can't teach governmental law that way. Even the experts don't understand it until they look it up. It should be simplified so that everyone can understand it—not only the officers and those in municipal government. Most of them don't understand it at the present time. I know whereof I speak because when I was city counsel I had to give so many legal opinions to practically every municipal board and to the different officers as to what their duties were and how far they could go. If they don't understand it, how can you expect the people to understand it? If the people don't understand it, it's impossible to get an intelligent and popular opinion on any subject of local government. That should be

corrected and it cannot be corrected unless you start with the Constitution and lay a proper basis for it.

Down in North Carolina they have done a fine job and they have raised the level of efficiency of local government, because they have educated the public and they have educated the local officers as to what municipal law is on general principles. And it is possible, I believe, to do it here. They are doing the same thing up in Massachusetts. Harvard has established a research laboratory—in effect that is what it is—on municipal affairs and local governmental affairs with the idea of raising the general intelligence on those matters. We cannot do it in this State with the hodgepodge of laws that we have affecting municipalities at the present time. We cannot begin to teach it in the schools; we cannot begin to talk about it; it is a matter of education.

When Mr. Miller and I wrote this pamphlet, we had to educate our readers before we could make our point. When you talk about flowers, people know what flowers are, they know something about them; there is a background of knowledge. When you talk about government, nobody understands it or how it came about. You must first educate your people before you can make your point. That is what makes it particularly difficult. But if the people once begin to understand what it is all about, which they can be made to do once you have stated the proposition in general principles, you will have better government because popular opinion controls government. If you don't have informed popular opinion on different subjects, you don't have good government. If you have a popular opinion that is unintelligent, you have bad government. You have to raise your sights on this and broaden your vision. If you look at it from a legalistic standpoint, you get nowhere. I have attended bar conventions for years and I have never seen the lawyers produce any reform or any improvement on their own. They're too hidebound by precedent.

MR. LANCE: Mr. Evans, I believe your first point was: What should be the fundamental nature of a municipality in the State, what should its powers be? Am I correct in assuming that at the present time a municipality in this State has only those powers which are expressly or impliedly given to it by the Legislature?

MR. EVANS: That is not correct. The municipality has only those powers which are expressly given to it, not implied.

MR. LANCE: I realize you are meeting next week with others on this problem, but can you give to us in a single sentence today, what you believe should be the basic powers of a municipality?

MR. EVANS: I can take a long time on that subject, but I believe that the basic powers should be conferred on the municipalities by general legislation, setting forth general principles; and that

the framework of the government, local government, should also be prescribed by the Legislature in general terms, not specific as to every detail within a particular office; and, as set down by the Legislature, the municipality should have practical autonomy, but subject to correction or subject to whatever law the Legislature may care to pass where it thinks some law is advisable, if it thinks municipalities are going too far within their local autonomy.

MR. CAVICCHIA: Can you have that virtual autonomy you speak of without having the right of taxation generally in all municipalities?

MR. EVANS: I think any powers of taxation conferred upon the municipality should be conferred by general laws of the Legislature. That is one of the standards that the Legislature should set. On the other hand, I don't think the Legislature should say what the salary of the comptroller of the City of Paterson should be, or extend tenure to somebody who has the political influence to get tenure and who may happen to be the treasurer of the city or something of that sort. That, I think, is interfering in local governmental affairs, and I don't think the Legislature has any right to do it. I'll go a step further: I don't think the Legislature has any moral right, in principle, to impose financial burdens on municipalities unless the State assumes its share of the responsibility, because when it imposes financial burdens not particularly connected with standards of government, it is violating a fundamental principle because it is exercising power without responsibility. That is wrong, and it often does it.

MR. CAVICCHIA: Then you would let the municipal governing body place financial burdens on its own people without supervision by the Legislature?

MR. EVANS: No, I say on standards set by the Legislature. I wouldn't abolish the Local Government Commission. I wouldn't abolish appropriations or restrictions on bonds issued. Those are all standards of good government. But when the Legislature for political purposes intervenes to favor somebody or favor any group of people at the expense of others or at the expense of taxpayers, that is wrong. I would even go so far as to say on principle—much as I sympathize with the plight of the teachers and would like to see them get more money, and they are entitled to it—the recent act of the Legislature in fixing salaries of local officials is absolutely wrong in principle unless the Legislature pays those salaries or contributes substantially to them. It has no right to impose a burden of that sort on local government authorities unless it assumes the responsibility. It's very easy to play politics and get the benefit of the support of different groups of people at the expense of somebody else. That is absolutely wrong in principle, and it cannot be justified.

CHAIRMAN: Mr. Evans, did I understand you to say that the specific recommendations which your group wants to offer to this Committee will be ready by Tuesday, and that we may have them on Tuesday?

MR. EVANS: We are going to try to do a good job and they won't be radical; they won't be extreme. We are just trying to get a start to build the proper sort of government on proper principles in this State, which we do not have at this time.

CHAIRMAN: I am sure your suggestions have been very helpful, and we would be very glad to have specific recommendations as to any clause you think should be incorporated in the Constitution. Does any member of the Committee desire to ask Mr. Evans any further questions?

MR. LANCE: Yes, one more question, Mr. Chairman. Mr. Evans, will your proposals differ substantially from the proposals contained in the model constitution proposed by the National Municipal League?

MR. EVANS: I can't answer that at the minute. We are giving that study and we intend to confer with the municipal lawyers connected with the State League of Municipalities on Monday afternoon. That will be one of the subjects that will be brought up for consideration, but when we present these proposals I believe they will have been specifically passed on by the municipal council connected with the State League.

CHAIRMAN: Any further questions for Mr. Evans?

Thank you very much, Mr. Evans. Your appearance is very much appreciated. You have been very, very helpful.

The next speaker who is registered is Reverend Marvin Green. Dr. Green, please?

DR. MARVIN W. GREEN: My name is Marvin W. Green; I'm a Democrat, always have been, always will be; father of two boys; resident of Weehawken, New Jersey, where I serve as minister of Park Methodist Church; Program Chairman of the Kiwanis Club of North Hudson, the Governor's Club. I can claim unofficial representation due to the public utterance of the following groups from which I quote: The Reformed Synod of New Jersey with 43,000 communicants—the past president asked me yesterday to represent this group at this meeting; the North Hudson Ministerial Association with 5,000 communicants, of which I am a member; Jersey City Clergy Club with some 7,500 members, both of the latter two groups being groups that have publicly gone on record affirming the position which I shall take; the Newark Annual Methodist Conference of which I am a member, which has stated its position as I shall state it, with some 131,000 members; and in addition to that I am officially president of the Hudson Methodist Parish which

has 21 churches in Hudson County with 3,500 communicants; therefore allowing me to represent unofficially and officially a body of some 186,000 people.

Honorable Chairman O'Mara, members of this Committee, guests and friends: No one of us can but applaud the impartiality of this Committee as it seeks correctly to assay majority opinion in the writing of a new Constitution for the State of New Jersey. As I sit before you I am something of an oddity. Not only am I a Democrat, but I am a Protestant Democrat as well, coming from Hudson County. Many think these two terms, "Democrat" and "Protestant," are mutually exclusive. I hope I may persuade them to the contrary.

CHAIRMAN: A very novel proposition, Doctor. I never heard of that before.

(Laughter)

DR. GREEN: With you, I am greatly concerned about good citizenship and good government. I am concerned about good government because I am the father of two boys whom I expect to rear in New Jersey.

It seems to me the Committee has before it five possible courses of action with regard to the matter of gambling. First, the new Constitution may leave gambling as it is with three race tracks doing business, and no other commercial or no charity gambling allowed. Or second, it might be that all gambling laws should be smashed and the State left wide open for any and all kinds of gambling. Third, it might write into the Constitution that we shall leave the present racing opportunities intact and add only bingo as an additional form of allowable gambling. Fourth, it may leave racing alone and also permit gambling for charity and religious organizations. Or fifth, the new Constitution might abolish racing altogether and all forms of gambling for all time, without excepting any group or organization, commercial or religious. May we examine these five possible courses of actions somewhat in detail, but briefly?

First, continuing to permit pari-mutuel gambling. It is doubtful whether those in favor of this position can muster any noticeable strength. The Catholic War Veterans opposed this position, and rightly so, as do we in the Protestant faith, because it discriminates against charity gambling. We feel there is a double standard of morality here set forth. If gambling is right for racing, it is right for religious and charitable organizations; conversely, let us point out, if it is wrong for racing, it is wrong for all other organizations as well.

Secondly, we might abolish all prohibitions against gambling. It is doubtful whether anybody in this room wants this. It would

mean less proceeds for the racing crowd; it would mean lowering the moral tone of our civilization, as religious-minded folk would point out; it might mean racketeers and objectional vice, as the war veterans might point out; it would hurt retail sales on merchandising, as businessmen might well point out. Few of these statements need further explanation. There is no question but that gambling does hurt business. I am told on good authority that the businessmen in Camden are organizing to fight racing because it has hurt their business. The same is true in Miami. The men there are organizing for an all-out drive on the gambling that is going on at Miami Beach. To illustrate this point further, for 56 days in Santa Anita, California, in 1938, when the gambling turnovers were so amazingly high, retail business in downtown Los Angeles in merchandising sales dropped from 15 per cent to 43 per cent, and general business out in Beverly Hills declined 39 per cent. Make no mistake about it, gambling is a mammoth threat to business prosperity. This Committee can therefore eliminate from serious consideration, it seems to me, abolition of all gambling prohibitions. Some prohibitions are very definitely needed.

The second point here to be considered is that gambling lowers the moral tone of our people. It is not religious fanaticism that caused the Reformed Synod at Metuchen this May to state to 43,000 communicants in New Jersey: "This Synod is opposed to gambling in any form, and in particular for the raising of funds for charitable or religious purposes." It was not religious fanaticism that caused the Jersey City Clergy Club, the North Hudson Ministerial Association, and the Hudson Parish repeatedly to exhort Prosecutor Roberson to take steps to enforce our state law or see that enforcement should come about. It is not religious fanaticism that caused the Committee on Church and Public Affairs of the Newark Methodist Conference to set forth the position of its 131,000 members in New Jersey in these words: "We can see no moral difference between criminal or commercial gambling and 'charity gambling.' We strongly urge individuals and churches to write to their State Senator and Assemblymen objecting to Bill S.C.R. 2 which would . . . permit the holding of bingo games for charitable purposes." It was hardly religious fanaticism that caused the writing of that passage in the Discipline to which ten millions of Methodists subscribe, in these words: "Gambling is a menace to business integrity; it breeds crime and is destructive of the interests of good government." It is to be remembered that the church is older than America and older than so-called "Colonial moralism." It is to be remembered that the church has seen the effects of gambling down through the ages and has come to take her stand as the result, not of emotional prejudices, but of strong intellectual convictions.

There is, therefore, a moral reason why this Committee can drop from their minds right now the possibility of opening up the State to all forms of gambling.

Thirdly, the new Constitution might permit gambling for racing and bingo only. There is that strange resolution now being sponsored by the Hudson County Republicans to legalize only bingo charity gambling along with racing. If I were back down in Georgia, I should have to be told just who the Republicans were and what they represent politically.

CHAIRMAN: Well, Mr. Carl Ruhlmann was the chairman of the Republican Committee, Dr. Green. The resolution that I got was signed by him.¹

DR. GREEN: That's right, Mr. Ruhlmann was chairman of the committee, with Mr. Semple publicizing it. But I am in New Jersey and am trying to understand just why they should discriminate against many different forms of charitable gambling in favor of just bingo. Why bingo? Has it virtues greater than the others? I should like to have our Republican friends state just exactly what their motives were in selecting bingo. This Committee doubtlessly senses the poor logic and the discriminatory direction of this resolution. Is it not unconstitutional, if not in letter, then in spirit? I am of the firm opinion that you should frame a Constitution that does not cater to the narrow demands of any political party.

Fourth, we might add to racing that is now legal in the old Constitution, and in the new Constitution make all forms of charity gambling legal. At this point, may I say to my war veteran friends that I appreciate their extreme need for quick and easy and large income to maintain their organizations? I, myself, face constantly the question in my own parish—how shall I raise \$10,000 in my budget, in free-will offerings from 100 people? But mere sympathy should not blur our critical thinking. We need to see the larger overall picture and its implications.

It is no new thing to propound a philosophy of government that would work out by encouraging men's vices, taxing those vices and growing fat on the proceeds. Mandeville, many years ago, espoused this corrupt philosophy, and since then he has had his political devotees. In short, it is one thing to believe that gambling is wrong yesterday, today, and forever, and quite another thing to believe that the end justifies the means. The end determined by a religious or charitable organization as justifying the means is an unworthy and, at present, an illegal, and at best, an immoral means. To define immorality, immorality is not especially a dramatic expression of debauchery. Immorality is, simply put, a man losing a sense of horror when he faces moral temptation. A college friend of

¹The resolution of the Hudson County Republican Committee appears in the Appendix to these Committee Proceedings.

mine once said: "I can do things now that it used to nearly kill me to do when I was younger." In this view he was growing immoral, for he was losing his sense of horror for evil, tolerating it, excusing it and, at last, embracing it, rationalizing and defending it. This is a process that may go on in a man's mind months and even years before it becomes dramatic in community expression as debauchery, but it is nonetheless immorality. This is what charity gambling tends to encourage. Charity gambling encourages youth to lose its horror for that which has, down through the centuries, been declared a moral wrong. Human experience amply affords overwhelming testimony to the truth of the stand of the church at this point. I wish to urge this Committee to realize that freely choosing what shall go into this Constitution, of course, carries with it a dreadful responsibility to the youth of our State. May nothing be done to help encourage immorality among them.

The organization I represent opposes gambling—even charity gambling. First, because it is entirely inconsistent to discriminate against commercial gambling in favor of any organization, even though that organization be religious or humanitarian. Second, we oppose gambling because it encourages laziness, an undisciplined will, a self-centered existence, the desire to get something for nothing. We oppose gambling of any kind, in the third place, because it becomes soon, not merely recreation, but a passion, and then a disease which eats away at the vital parts of a man's will-power, until he at last becomes a slave to a habit, unseen though it be, but a habit, no less. One of my neighbors told me his mother-in-law was attending bingo and lotteries nearly every night of the week, and was losing approximately \$100 a week, every week, of his hard-earned cash.

CHAIRMAN: His mother-in-law? How did she get his cash?

(Laughter)

DR. GREEN: He was a very weak man.

Fourthly, we oppose gambling because the God of the universe is ushered out of a man's life, gradually but effectively, until the God of Chance is firmly established. Fifthly, we oppose gambling because it opposes human brotherhood. Brotherhood is based on cooperation and sacrifice, but the gambler seeks only his own good at the expense of others. He does not work by the sweat of his brow to earn what he gains as a winner, but it comes to him as money that belongs to others. The gambler becomes a proponent, by his actions, of anarchy, for his disposition is that of one who chooses self above his God, his neighbor, and the laws of his country.

And this is what has grieved some of us so keenly who see our sister religious organizations deliberately flaunting the law because

they find the law works to their disadvantage. It is no secret that Prosecutor Roberson has had directives from our offices on nine different occasions in recent months, by registered mail—complaints giving the exact time, the exact places, and the exact organizations which were deliberately flaunting and breaking the law of the State of New Jersey. Now, shall any group—even religious in nature—be permitted to carry on a propaganda campaign, to tear down and wreck by deliberate disobedience any law they find they do not care for? If so, then anarchy is upon us, and we are in a sorry plight.

Sixthly, we oppose gambling for the reasons George Washington opposed it. Said he: "It is a vice which is productive of every possible evil . . . It is the child of avarice, the brother of iniquity, and the father of mischief." Finally, we oppose gambling—especially charity gambling—because it is a wedge the opposition will attempt to slip in and profit from in months to come.

Over the period of the last ten years I have studied the techniques of those who desire to open up a state to all gambling. Their very first step is to secure charity gambling as the opening wedge. Then follows the argument that other forms of commercial gambling should not be discriminated against. In the propaganda that they send out, organizations are urged to break the law deliberately. Even men in high office, fearing for their political future, dare not oppose these anarchists. When the citizenry is sufficiently disgusted with these apparent inconsistencies, then final repeal of all anti-gambling laws is secured. This was the procedure in each of the following states where gambling is now wide open: Arkansas, California, Florida, Illinois, Nebraska, Ohio, Texas, and West Virginia. Will this Committee be a partner to adding to this list the name of our fair State of New Jersey? I am certain it won't.

I have not found many civic, humanitarian, charitable and religious organizations asking for charity gambling. Where are the Masons, the Kiwanians, the Rotarians, the Girl Scouts, the Boy Scouts, the Red Cross, the Lions, and the 57 varieties and more of Protestant denominations, seeking to get rid of our ancient anti-gambling stand for charity purposes? The truth is before us, gentlemen and ladies: the opposition does not represent the majority of the voting population in New Jersey—far from it.

Is there not, then, left one last procedure for the Committee to consider—that of wiping out all gambling in the State? Why should pari-mutuel have rights and privileges not given to others? If wrong for others, is it not wrong for racing? If right for racing, is it not right for others? Is not the choice between either no gambling or no prohibition against gambling? Dare we have a part in unleashing an avalanche of moral depravity and degraded citizenship by tearing down the sandbag named charity gambling?

A young man sat in my presence in tears. He had confessed: "When I see a gambling machine I go weak all over. Not that putting money into a machine made of metal is so wrong, but somehow when I give way to gambling I lose all sense of moral direction. When I gamble I find it easy to go out and do other things that are immoral." This youth is not psychopathic, but an average, normal youth. He is not a religious fanatic, but a sincere seeker after truth. He has an average amount of curiosity, he has a free will, and he has the possibility, as we all do, of making wrong choices.

We oppose gambling because we want in our State that kind of encouragement that will make good citizenship for your children and my children easy to achieve. Is it not true that only in such a program is there peace, prosperity and divine blessing? To this end, may I leave with you the following resolutions:

1. WHEREAS, the choice before us is one either for gambling in an unlimited form, or no gambling at all; and
2. WHEREAS, gambling has been proven to be detrimental to the progress of moral character; and
3. WHEREAS, many religious (and perhaps charitable) organizations have openly and publicly broken the present state law that unquestionably makes gambling a crime; and
4. WHEREAS, charity gambling would be the opening wedge to permit, finally, any and all forms of gambling;

BE IT THEREFORE RESOLVED, That we, the twenty-one Churches of the Hudson Methodist Parish, representing some 3,500 members, with the full approval of our District Superintendent, Dr. Harold N. Smith, and our Area Bishop, Bishop G. Bromley Oxnam, do appeal to the duly elected delegates to the Constitutional Convention meeting in New Brunswick, that due consideration be given to the proposition that *all* forms of gambling for *all-time* (including the present pari-mutuel organizations) be completely and finally eliminated by constitutional provision.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to all interested and involved public officials of our State, counties and municipalities.

Marvin W. Green, President
The Hudson Methodist Parish"

CHAIRMAN: Doctor, would you leave a copy of your remarks with the stenographer, please?

Does any member of the Committee desire to ask Dr. Green any questions?

MR. LEWIS: You are a student of history, Doctor? Would you not say that gambling has been a human problem ever since the organization of society?

DR. GREEN: Gambling is a very dynamic, lovely proposition for anyone with freedom, and I would say "yes."

MR. LEWIS: Doctor, in your opinion, would it be better to abolish gambling entirely by the Constitution and not be able to enforce that constitutional provision, or to have some provision that could be enforced?

DR. GREEN: May I ask you a question, Senator?

MR. LEWIS: I should be glad to yield.

DR. GREEN: Would it be better, knowing that men will murder until the end of the world, to stop all laws that we have prohibiting murder and to allow men to go on and murder, or would it be better to write it into the Constitution and do what we can to enforce it?

MR. LEWIS: Doctor, may I be Chinese enough to answer a question with a question?

DR. GREEN: I yield.

MR. LEWIS: Do you conceive that it would be possible to enforce a constitutional provision against all gambling?

DR. GREEN: You are a perfectionist and an idealist, it would seem from the direction of your question, Senator. I don't think any law can be enforced 100 per cent, but it can be enforced much better than it is now in Hudson County.

CHAIRMAN: Or anywhere else in the State.

MR. LEWIS: I would like to get your point of view as to whether, in your opinion, it would be advisable to try to abolish gambling entirely, or to recognize the fact that we have that problem and instead of trying to abolish it completely, try to regulate it and do so properly.

DR. GREEN: Senator, if you agree with me that there is some moral implication in the question, I would like to say as one who deals with morals and moral values all the time, that I have found you get much better achievement and moral activity when you strive for the perfect and the high, and that therefore if you maintain attention towards the ideal, by raising standards to perfection, you'll get a much better percentage of achievement than if you seek to permit compromises that would somehow relieve the tension between the perfect ideal and man as he is, imperfect, in the world here. Does that answer the question? In other words, I favor the resolution I have just presented.

MR. LANCE: Reverend, I can sympathize with you on your views on pari-mutuel betting. As a member of the Assembly in 1938, I refused to give a vote to pari-mutuel betting. However, we now have the tracks, and as a technical matter, which we as practical persons must face at this Convention—and I speak only for myself—I seriously doubt that the majority of the delegates to this Convention will wipe out provisions against pari-mutuel betting at race tracks. Assuming that to be true, but speaking only for myself and not knowing, we are further faced with the practical proposition of whether we should prohibit bingo for charitable purposes and still allow race track gambling, which as I said before I am against, not on moral grounds, but on economic grounds on the theory that people lose money at the race tracks who can least afford to lose money as a general proposition.

However, have you and the groups that you represent given any thought to a proposition similar to that used by New York when it submitted its Constitution to the people ten years or so ago? New York submitted to them a fundamental charter and also submitted certain amendments. What would be your opinion of submitting to the people a separate constitutional amendment which they could vote on separately, as to whether or not they would allow the Legislature to legalize games of chance for charitable purposes?

DR. GREEN: Well, I would not want to make an official statement because I had not considered that possibility and I would like to study it quite in detail and confer with those in the group I represent. So if you'll allow me to suspend judgment, which I believe we have the right of doing occasionally, I would like to withhold that. I appreciate your statement of your particular belief and recognize with you that it is one person's opinion.

CHAIRMAN: Doctor, could we have the answer to that question as promptly as possible? Could you write to the Committee and let us have it within the next four or five days.

DR. GREEN: I would be happy to do that, yes.

MR. JORGENSEN: Reverend, is it the opinion of the groups you represent that a provision with respect to gambling, either for or against or a midway point, should be a part of the fundamental law of this State?

DR. GREEN: Would you state that question more simply?

MR. JORGENSEN: In other words, do you feel that in the drafting of the Constitution, which is necessarily the fundamental precept upon which the government of the State is going to operate, we should have any provision with respect to gambling, one way or the other?

DR. GREEN: That's another one of the questions on which our own group is divided, as to whether the Legislature shall handle that matter or whether it's a matter for this Committee.

MR. JORGENSEN: As a practical matter, it is true, I believe, that the Legislature handles it now; because without the laws upon the statute books the provision in the Constitution in and by itself would be meaningless, except that the Legislature would be prohibited from legalizing it. If there were no enforcement legislation, the provision in the Constitution would have absolutely no value.

DR. GREEN: I expect that I agree with you, but I am puzzled to know why you called us down to consider this question, then.

MR. JORGENSEN: I think the reason we are interested is to know whether or not you feel it belongs in the Constitution.

CHAIRMAN: Doctor, it is in the Constitution now. The question to which Mr. Jorgensen has directed your attention is whether

or not the new Constitution should eliminate all reference to gambling and so permit the Legislature to deal with that subject, or whether or not there should be a constitutional provision which would circumscribe the right of the Legislature to deal with it.

DR. GREEN: Well, speaking as a practical man now, not as an idealist, we would like very much to have this matter settled immediately in the writing of the new Constitution. If we don't get it there, why then we will try again with the Legislature, if it becomes the will of the majority to let it be settled that way.

MR. JORGENSEN: Doctor, I would like to ask you this question: You are undoubtedly a believer in many of the statute laws with respect to crimes, if they are good; for instance, the crime of homicide. Now, certainly, I don't think that you will disagree that the commission of an act of homicide is a much more serious and offensive act than the social or charitable gambling participation at the race track would be. Yet we have no request from anybody to incorporate in the Constitution provisions to the effect that the Legislature shall not permit acts of homicide.

DR. GREEN: Now then, what is your question?

MR. JORGENSEN: Whether you feel that in the dignified instrument that the Constitution undoubtedly is supposed to be, we should even have to use the word "gambling"?

DR. GREEN: You see, the position I take, I suppose, is based 75 per cent on religious faith. But religious faith is not demonstrable or proven scientifically and therefore I cannot put this moral matter in the same scientific category as you would put homicide. One has to do with free will and morality; the other has to do with something much more dramatic. The Ten Commandments, for instance, would surely have a law there that would deal with homicide, but your Ten Commandments have nothing to say about gambling.

MR. JORGENSEN: The Ten Commandments are not in the Constitution.

DR. GREEN: They are very basic in every democratic constitutional scheme all over the world, universally so. The Ten Commandments of the Hebrew tradition are basic. There are lawyers here. Isn't it so?

CHAIRMAN: Lawyers, but very few theologians . . . Dr. Green, I would like to know, if I understand your position correctly, and I think I do, I get this from your allusion to the crime of murder. In answering Senator Lewis' question, did you mean to imply that you think that gambling is on the same level with murder as a moral offense?

DR. GREEN: Not at all, taken literally.

CHAIRMAN: I should not take you literally, then. Let me ask

you this: Is it your position that gambling in and of itself is immoral, without any qualifications whatever?

DR. GREEN: Everything has qualifications.

CHAIRMAN: I will put it more concretely. Assume a man has an income from his profession or earnings of say 15 or 20 thousand dollars a year and he engages in a game of bridge in his home in which the stakes amount to, say, two dollars for the evening. He loses two dollars in a game of bridge. Do you consider that immoral?

DR. GREEN: You have to look at any thing immediately, and from the long distance point of view, potentially. Immediately speaking, if the motive has been one of recreation and sociability, the answer is, no, it is not immoral; potentially speaking, as you see the direction that man's freedom is taking—knowing the thrill, perhaps we both know it by personal experience, that comes from gambling—I would say it is immoral, potentially speaking, for it can lead to the habitual use of that expression of freedom which will finally bring that man to a place where he is a slave to a diseased will and habit that may wreck his family. To that extent, it is immoral.

CHAIRMAN: So that the act in and of itself, supposing it stopped there, you would not consider immoral? What you fear is the growth of the habit in the individual so that by an abuse of it, it would become immoral, to the point for instance, where he wagered something beyond what his income should permit and his family would suffer from it. Is that your position?

DR. GREEN: Right you are, speaking personally and not officially for what I represent.

MR. LANCE: Doctor, did you take a definite position on this proposition: Suppose that the new Constitution said nothing whatsoever about gambling, which would leave it solely within the prerogative and good judgment of the Legislature from time to time, as are all of our other criminal laws. Would you take a flat position against that proposition?

DR. GREEN: No, I wouldn't. I would want to leave a loophole for myself for later action. I was just the day before yesterday talking with one who has been a leader in this group, whose opinion I value very highly, and he very flatly stated that it was not a matter for the constitutional committee, but should be left for the Legislature. On the other hand, I have talked to those in our group who feel that we ought to do all we can do immediately from our own particular set of free suppositions and assumptions.

CHAIRMAN: Do any other members of the Committee desire to ask Dr. Green any questions? . . . If not, thank you very much, Doctor. Your views have been very helpful.

MR. LANCE: Mr. Chairman, I don't want to usurp your prerogatives, but I would like to say that I think the gentleman who just left us stated his material in as analytical form as anybody I have ever seen at any public hearing.

CHAIRMAN: I agree with that, Judge Lance.

The next speaker registered is Dr. Fullerton.

DR. WILLIAM E. FULLERTON: I am lending a little moral support to Dr. Green. My name is William Evan Fullerton, minister of St. Paul's Methodist in West New York, and I represent the Hudson Methodist Parish. I just wanted to speak a moment or two on one of the points of Dr. Green's statement.

I would like to start by saying that the wrongness of gambling has been built into my life from childhood. I cannot think that it is any other than an evil thing. It was built in there through the influence of the home and through the influence of the church, perhaps primarily through the influence of the church. It's an attitude that has been built up and it is an attitude which I feel it important to pass on to my children and to the children of the people to whom I minister. I teach my boys that gambling is wrong at race tracks, and carnivals, and sweepstakes in any or every form. I believe that I can impart to them these attitudes that are so important to me and, I believe, to our country as a whole. I believe that they can come to have the attitude toward gambling that I have and that my father before me had.

I know of one sure way in which to knock out the sense from my children that gambling is wrong, and that is to bring it into the church and to associate it with good causes, humanitarian, charity causes and the like. I think that is the most insidious thing about the course that some would recommend—tying up gambling with charitable and religious enterprises. We say to our children and to our church people and to the people of our organizations, "Here's a good cause. To support it, we want you to gamble." So, for a good thing a boy or a man gambles, urged on by those who are supposed to have a concern for his eternal welfare. Learning to gamble for the good, his sense of the evil nature of gambling itself becomes blunt, and soon he can gamble for anything.

I think that one of the most important things that the church seeks to build up is the spirit of unselfish giving for a cause because the cause itself is good, without having to tell some people that they are going to get some private good, perhaps some private gain, out of giving to that cause. I think that is the idea of all charitable and all religious institutions. To think that men's interest in, say, the cause of the church is so reduced that they will only give if they have a chance of some private profit through the giving, is to say that a very sad state of things has been arrived at.

I think that one of the most tragic things in all history is the scene at the cross where we see the Master of men giving His life unselfishly to the point of extreme sacrifice for the lives of men to the end of time, and there right beside Him, within the shadow, men so far from His spirit, thinking only in terms of which one of them should get His clothing, and gambling to that end. But I think to gamble in the church or to gamble in any organization which seeks to carry on the charitable spirit of the Master, the spirit of giving, is to be as far from the sacrificial spirit of the Master Who gave for the sake of the thing because it was good enough then, as were the soldiers at His cross.

I would like to say that the church is supposed to be a little higher in its idealism than any other institution on earth, and to make allowances for gambling in church and to allow it nowhere else or in few other places is to make the church a little lower in its idealism and practice than any other institution. I would be ashamed to belong to a church that expected to be allowed to act in a lower way than any other institution on the continent. I just want to support the resolution of the Hudson Methodist Parish in thus stating my case.

MR. JORGENSEN: Dr. Fullerton, I would like to ask you the same question, but I think I had better preface it by saying first that personally I am not in favor of gambling, so that an erroneous deduction is not drawn from my queries: Do you feel that a provision with respect to gambling belongs in the fundamental law of the State? Or do you feel that it is a proper matter for legislative enactment and control?

DR. FULLERTON: I would like to see it in the laws of the State.

MR. JORGENSEN: I am differentiating between the Constitution and the laws of the State. It is in the laws of the State. Whether we leave it in the Constitution or out of the Constitution, it remains the law of the State. I am only concerned about its incorporation—your feeling as to whether or not it should be incorporated in the fundamental Constitution?

DR. FULLERTON: It is a thing that is, I think, so fundamentally wrong and so detrimental to the country that I would feel it is something which should be in the Constitution.

MR. JORGENSEN: Do you feel that it is any more wrong than any one of the statutory crimes or high misdemeanors?

DR. FULLERTON: No, I wouldn't say that.

MR. JORGENSEN: Can you give us any good reasons why you feel that it, isolated and alone, should be incorporated in the Constitution, other than the fact that it is your personal feeling?

DR. FULLERTON: No, I have no other reason.

CHAIRMAN: Any further questions of Dr. Fullerton? . . . Thank you very much, Dr. Fullerton.

The next speaker who is listed is Mr. Charles Merklein. Mr. Merklein, will you please state for the record your full name and address, and whether or not you are appearing as an individual or representing any organization.

MR. CHARLES MERKLEIN: Officially, I am not representing any organization—

CHAIRMAN: State your name first, please.

MR. MERKLEIN: My name is Charles Merklein, and I want to state here that when I started off on this matter I started off as an individual, and I began to create what is known as the Crusaders' League as I went along. Later on, after I had written a letter to Judge Brogan, Chief Justice Brogan of the Supreme Court, and succeeded in having bingo recognized as being an illegal form of gambling, I noticed that in spite of the Chief Justice's edict these games continued to go on. I began then to act as a "seeing eye" for a number of ministerial organizations, and today I may say that spiritually I speak for the whole ministry of Hudson County. I will bring that out more clearly for you. I am sure they wouldn't care to have me say I am a member of those organizations since I am not a minister, but they are in full sympathy with me and at my behest and on the basis of evidence that I have given them, they have repeatedly asked Prosector Roberson of Hudson County to put an end to the bingo games which are still going on, to put an end to the carnival money wheels which are still going on, to put an end to the lottery of cars and other merchandise which is still going on in spite of the fact that I have also succeeded in having Chief Justice Case come down and declare these practices illegal. I also have pointed out that Judge Minturn some time ago declared these practices illegal.

I am now coming down here to add my feeble words to these gentlemen who have in vain written to the various law enforcement officials, including Justice Case, who has ignored their letters, and Mr. Roberson, who has ignored their letters and has ignored all of my letters and has refused to see me or have anything to do with me.

Now, I maintain that the laxity of law enforcement officials or their reluctance to enforce the law is no excuse to legalize the practice of whitewashing any or all organizations engaged in bingo practices. These organizations should first show their sincerity by obeying the laws as they are written and then proceeding to change them.

My objection to legalized bingo is this: I notice in all these resolutions that have been sent to the Constitutional Convention here,

that they all want it for fraternal purposes, for charitable purposes. First, they state the premise that gambling is not immoral. It is not immoral, they say. Then they turn right around and they say, we want it legalized only for us. Therefore, impliedly they signify that gambling is immoral and they think so for certain people. Now, to make any change whatsoever in law or Constitution may well be regarded as class legislation when you specify "for fraternal purposes" or "charitable purposes," and that matter will be constantly brought up in the future in our courts of law. People would be attacking the constitutionality of it. One man would start to play a bingo game, another man would start to run a carnival, and he would say, and he would be right in saying this, too—he would be sustained by the court, I'm sure—that he is as good as any organizations, regardless of what their significance may be, charitable or otherwise, and he has just as much right to run a carnival game or a bingo game or any other game as they have. That would be an American statement of his rights. In other words, this legislation would be undemocratic and un-American.

I would say, lastly, speaking on the moral side, I noticed that the reverend gentlemen who are acting in unison with me on this matter could not answer or refrained from answering certain of the questions here. I have taken the liberty to note those questions. I would like to say to Senator O'Mara that gambling is as bad as most other crimes, and if he doesn't believe it, let him go up to the state prison at Trenton as a visitor and he will note that they all wear the same suits, and they all wear numbers. The Lewis brothers are up there. There's a man by the name of O'Shust who is up there, and I believe there are a great many others up there for violation of the gambling laws. I don't think it's right for grand juries to indict men and juries to send men up to state prison for violation of the gambling laws and then ignore totally complaints against gambling when sponsored by these various institutions.

My whole idea is to bring out the legality, the constitutionality and the Americanism involved here.

CHAIRMAN: Mr. Merklein, may I say to you that my question to Dr. Green was directed to the moral quality of murder and gambling, not to the legal quality. I wasn't particularly concerned—

MR. MERKLEIN: I would like to answer that—

CHAIRMAN: All right. Please let me finish first. I wasn't particularly concerned with whether or not prisoners who are in prison for violation of the anti-gambling laws wear a different kind of uniform or not, but my question was: Is gambling in and of itself immoral as murder is in and of itself immoral?

MR. MERKLEIN: Well, the answer to that would be that there are crimes of higher and lower nature. Gambling is a crime, and

any crime is immoral and anything that is illegal is immoral. There is a man by the name of Westbrook Pegler who makes that statement in one of his columns. If anything is against the law and a man knowingly violates the law, even if he steals a penny, you may as well ask me if a man steals one penny, is that immoral? I say the amount has nothing to do with it, but the fundamental principle involved has something to do with it.

Now, this rich gentleman that you mention as your suppositious case, who has, let us say, a couple of million dollars, and he sits down in his house and plays a game. He is setting a bad example. Suppose he has children around there watching him gambling for a dollar, or penny-ante, if you please. He is setting a bad example for those children in that he is engaged in an evil practice, a practice which he knows is, to be sure, a minor matter in amount but it's just as bad in the sense that it's against the law. He is really violating the law. Therefore, he is in a small sense immoral.

There are different degrees of immorality. Some immorality is higher than others. I'll agree there are lesser crimes. Some crimes you get only a jail sentence for. Some crimes you get merely a fine for. Some things, as I say, are of a higher state of immorality than some others.

CHAIRMAN: Mr. Merklein, what we are concerned with now is whether or not there should be any change in the constitutional provision dealing with gambling. What we are particularly interested in, or what I am particularly interested in, is your viewpoint as to the immorality of gambling in and of itself. Now, you think that all gambling is wrong?

MR. MERKLEIN: I think so, yes.

CHAIRMAN: Because it violates the civil law or because it violates the moral law? Or to put it more concretely, the law of New Jersey now authorizes gambling by pari-mutuel betting on horse racing. Do you think it is wrong for a man to go to the track, for instance, and bet two dollars on the result of a horse race?

MR. MERKLEIN: I see. You mean aside and apart from the legal significance?

CHAIRMAN: Yes; that's legalized now.

MR. MERKLEIN: That is now legalized, you're right.

CHAIRMAN: Now, is it immoral for a man who makes a good income—

MR. MERKLEIN: For myself—

CHAIRMAN: Please let me finish my question. Is it immoral for a man who makes a good income, who wants to go to the track for an afternoon's entertainment, and who wagers two dollars on a race? The two dollars will never be missed by him, nor will his family be deprived of anything should he lose it. He regards that

as a form of recreation. Do you consider that that is an immoral act on his part?

MR. MERKLEIN: I am sorry to have to tell you that I do.

CHAIRMAN: Well, don't be sorry about it. All I want to know is what you think. You have a right to your opinion.

MR. MERKLEIN: I surmise from the way you are saying that to me now that you are going to think something about me if I say I think it is immoral. As I said before, from the standpoint of principle, it is immoral in that he is setting a bad example. I can show you that right now. This gentleman, whoever he may be—I've seen cases like this—goes to that track. He has an employee in his employment. We will say it is a bank in which the employees happen to know that Mr. B.—they always refer to him as Mr. B., you know, in B's bank—Mr. B. goes to the track and expends thousands of dollars which he doesn't feel. It really doesn't affect him at all; he doesn't know what to do with the money, in fact. Well, he is setting a bad example for those employees who have no money and who in their turn would think that they can do the same thing, and they'll go up and gamble and they may even steal the money, and you know that many a man has gone wrong with the horses. I am not going to explain anything of what horse racing has done to towns, to families and to people. Senator Brunner—is he a Senator or Mayor of Camden?—has repeatedly come out and told us how horse racing has destroyed Camden and he has seriously considered de-legalizing pari-mutuel.

If you want to do something really good, de-legalize this pari-mutuel, take it out of the Constitution and have all gambling prohibited. Then these institutions will not feel, although they are wrong in so feeling, that they are being discriminated against by permitting one evil, and, therefore, they have as much right to practice evil as the pari-mutuel. In other words, they feel that because we have pari-mutuel at the track, why can't we have bingo, and so forth.

I say, settle the controversy easily and simply by putting pari-mutuel out. I'll give you the benefit of a little of my investigation among ministers. They have felt, some of them, that they haven't put up the right fight against pari-mutuel. That sort of took them unawares. I'm sure if another opportunity were given them they would knock pari-mutuel out this time. I spoke to several prominent ministers on that.

CHAIRMAN: Does any other member of the Committee desire to ask Mr. Merklein any questions? . . . Thank you . . . Oh, Mr. Jorgensen.

MR. JORGENSEN: You refer to carnivals and money wheels, and that you would like to have them stopped. Do you draw a dis-

inction between a money wheel and a wheel whereby you place an investment on a number for a prize of a Kewpie doll or some such like merchandise?

MR. MERKLEIN: I will be very happy to explain that to you. They are dangerous because in observing these wheels where these so-called Kewpie dolls and hams were being handed out, and other merchandise. I notice that they do not fool around with the merchandise. I notice that they take advantage and they hand cash money over. I would say it is very hard to make an observation. Anything where you get more value, where you take a chance on expending a small sum of money with the hope of making more than you've placed, is immoral and it should be stopped the same as those money wheels.

I also notice in these so-called merchandise bingos, and these merchandise wheels, that the merchandise can be transferred over for cash later. You know you can't stay around with these people 24 hours a day, 365 days a year. You don't see what goes on after the transfer takes place—

MR. JORGENSEN: Pardon the interruption, but you haven't answered my question. I want to know if you draw a line of distinction—

MR. MERKLEIN: No, sir.

MR. JORGENSEN: —whether or not the prize is an article or the prize is money?

MR. MERKLEIN: I'll say there is no distinction; it's still gambling whether it's for merchandise or money, and I'm sure the law bears that out.

CHAIRMAN: Mr. Merklein, what would you think of the morality of a man who bought a hundred shares of United States Steel common on the stock market in the hope that the price was going to advance and he could sell it at a higher price?

MR. MERKLEIN: That question was brought out very clearly for us some time ago. If I'm not mistaken, a gentleman mentioned something about gambling in the stock market over in Wall Street. They took his position away from him and, therefore, that proves to me that over there they are a little bit squeamish about their practices; otherwise they wouldn't punish this man for stating that the stock market and so forth is gambling.

CHAIRMAN: No, I want to know your opinion of it. Do you think it is immoral for a man to buy some shares on the New York Stock Exchange in the hope that the price is going to appreciate?

MR. MERKLEIN: I would say no, because that's an established business custom. You see, the stock market is a business; you buy and you sell and it is not necessarily a gamble. You buy outright there; you buy shares. In a certain sense, you're buying merchandise. It's buying and selling; that is not gambling.

CHAIRMAN: Judge Camp. Will you speak into the microphone, please, Judge?

MR. CAMP: What do you say about the morality of buying a life insurance policy?

MR. MERKLEIN: Well, there's nothing immoral about that.

MR. CAMP: I mean on the life of another—whether doing it is a pure investment or a gamble?

MR. MERKLEIN: Well, I would say that must be seriously questioned. You know, in a murder case they always go into that question of whether a man or woman buys a policy on the life of another, and that becomes a very serious question.

CHAIRMAN: In trying to find a motive for the murder, you mean?

MR. MERKLEIN: That's right, yes sir.

CHAIRMAN: But the gambling element is not investigated, is it?

MR. MERKLEIN: No sir. I will say this—I don't consider that a gamble but that's a science. You know the mortuary tables—I'll sustain myself in that. I'm sure that if you went to any of the insurance companies they would like to assure you that they are engaged in the science of insurance. In other words, these annuity tables and these mortuary tables or maturity tables, whatever you call them—mortality tables, that's right; I'm sorry—they estimate, but that's done on science; that's really skill. Now, we must distinguish between games of skill and games of chance.

CHAIRMAN: But Mr. Merklein, when you buy a policy of insurance on your own life, say for \$10,000, you are in effect betting that you are going to die before you could save the \$10,000, aren't you?

MR. MERKLEIN: Oh, no, I don't see it that way at all. That is a proviso; it is not a gamble. You are not doing that for profit or gain; you are doing that to guarantee against something that you know is a certainty, namely, death. It's just a matter of when death occurs. It's certain, it's a sure thing; you're purchasing an annuity. Now, buying and selling something which may fluctuate in value is not gambling; it's the intention and the purpose with which a man does these things that makes this gambling.

MR. JORGENSEN: Mr. Merklein, I take it that you are against all forms of crime?

MR. MERKLEIN: Oh, I think so; yes, sir.

MR. JORGENSEN: And all crimes are crimes by virtue of the statutes?

MR. MERKLEIN: Well, no, there are what we—may I draw a little on some of my legal knowledge, of which I have forgotten most? There are what we call crimes *per se* and then *malum per se*.

Are you a lawyer by any chance? If you are, you know exactly what—

MR. JORGENSEN: I am, for the moment.

MR. MERKLEIN: I see. Well, anyhow, there are some crimes which are not statutory crimes and other crimes which are recognized the world over as crimes. Crimes against nature, for instance—

CHAIRMAN: *Malum per se* and *malum prohibitum*.

MR. MERKLEIN: Yes, sir. You've come to the rescue on that, Senator O'Mara.

MR. JORGENSEN: Well, at any rate, I take it you are against all crime?

MR. MERKLEIN: I really am. Yes, sir.

MR. JORGENSEN: And all crimes in this State are statutory.

MR. MERKLEIN: Are they really, sir?

MR. JORGENSEN: And that being the fact, do you find any reason to differentiate between the crime of gambling and all other crimes, on some of which the penalty and the punitive provisions under the law necessarily are much higher than the gambling penalties? Why do you feel, or do you feel, that gambling has a proper place in the Constitution?

MR. MERKLEIN: Gambling has a proper place in the Constitution because it's a fundamental condition; it refers to the public good; it isn't like murder. Murder is understood; gambling is ambiguous. You see, as we find out here, lots of people think that gambling is not a crime; others think it's not immoral. Therefore, where there's an ambiguity and it's likely to lead to serious controversy, it has a place in the Constitution.

CHAIRMAN: Like drinking liquor.

MR. MERKLEIN: That would have a place in the Constitution.

CHAIRMAN: It did.

MR. MERKLEIN: See, there's another similar situation.

MR. JORGENSEN: I don't want to protract this discussion unnecessarily, but you stated that murder is understood and gambling isn't. Personally, I feel I know something about gambling, although I don't like to do it and don't indulge, but I can't understand murder. How do you reconcile that?

MR. MERKLEIN: Oh, you can't understand it. Are you fooling with me now when you say you can't understand murder? I want to bring out that murder is so clearly understood by all mankind, it's not a controversial issue. I'll have to admit that gambling is a controversial issue because it's being made one. There are some people who feel that gambling is not immoral. There are some people who feel it shouldn't be regarded as a crime, although it is a crime; that's the fact we must face now. It has been a crime and will be for a long time to come. Now murder—I'm sure there is

no controversial issue about murder; any man understands what murder is.

MR. JORGENSEN: We understand what it is, we understand what gambling is—

MR. MERKLEIN: And appreciate it—

CHAIRMAN: I think Mr. Merklein's observations are along this line,—that it is generally recognized by everybody that murder is in and of itself wrong, whereas there is a difference of opinion as to whether or not gambling is. Is that your position, Mr. Merklein?

MR. MERKLEIN: That's about right, Senator O'Mara.

CHAIRMAN: Any other questions? . . . Thank you very much, Mr. Merklein, for coming down.

The next speaker registered is Mr. E. G. Fifield. Will you please give us your name, your address and whether or not you are appearing as an individual or as the representative of any organization?

MR. ERNEST G. FIFIELD: My name is Ernest G. Fifield and I am a member of the Montclair Planning Board and appearing for that board. A committee of the Montclair Planning Board has considered—

CHAIRMAN: Will you excuse me just a minute, Mr. Fifield?

It is quite apparent that we cannot hear any further witnesses before the noon recess, and everyone who has registered will be called at 1:45. You are perfectly welcome to stay, of course, to hear Mr. Fifield, but if you want to leave we will call no more witnesses before the noon recess.

MR. FIFIELD: As I was saying, a committee of the Montclair Planning Board has considered different provisions which it thinks are essential to be included in the Constitution in order to promote the efficient work of our planning board and the efficient work of planning boards throughout the State.¹ I understand that the New Jersey Federation of Official Planning Boards has presented certain provisions for the Constitution. And I may say that we are looking toward the same end as the New Jersey Federation of Official Planning Boards. We feel, however, that the provisions we have presented perhaps cover the ground in a little more concise and satisfactory form. We have not presented any provision on low cost housing, which is one of the provisions presented by the Official Planning Boards, and I heartily endorse that provision.

The first provision which I would like to call your attention to is that for zoning. The one that we have suggested reads as follows:

¹ The proposals of the committee of the Montclair Planning Board appear in the Appendix to these Committee Proceedings.

“The Legislature may enact general laws under which political subdivisions of the State may limit and restrict to specified districts and regulate therein, buildings and structure according to their construction, and the nature and extent of their use and the nature and extent of the uses of land; and may require the discontinuance, after a reasonable time from the adoption of such regulations, of structures and uses which are contrary to said regulations. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place, for the protection and conservation thereof.”

It is now universally recognized that zoning is beneficial and necessary to the improvement of our towns and cities. There were certain decisions by the Court of Errors and Appeals in New Jersey holding that zoning was unconstitutional and, because of those decisions, an amendment was adopted to the Constitution in 1927 expressly permitting zoning. We feel that it is essential that a zoning regulation also be included in the new Constitution because there is danger that if not so included the courts may follow the old custom which held that zoning was unconstitutional in lieu of any express provision. This provision which we have suggested differs in some respects from the present provision for zoning and also from the provision for zoning presented in the 1944 Constitution.

In the first place, I agree with Mr. Caldwell, who appeared here earlier this morning, that there is no reason why counties should be excluded from the right to zone. A large part of the lands in the State are not included in large municipalities or cities which have planning boards. They are rural neighborhoods. And I think that we will find—at least find in the future; we do not agree now—that rural planning is going to be just as important as urban planning, and unless we give this power to the counties there is no power which can zone for these rural communities. I know the objection is raised that there would be conflict between municipal planning boards and the county planning boards. It seems to me that a law properly drafted would eliminate any conflict and would confine each of the planning boards to its appropriate zone.

We have also inserted in this proposal a provision regarding nonconforming uses. Of course, it has been held by the courts that any use which is nonconforming at the time that any zoning was adopted can continue indefinitely. Now, a nonconforming use can be just as bad and do just as much harm to proper zoning, to the proper development of the town, as can a new use, and legally it is proper to provide that a nonconforming use shall be eliminated after a reasonable time. What is a reasonable time would be determined by the Legislature and by the courts. But with this restriction as to a reasonable time, I do not think that any private property values would be damaged to any extent and that the public use would be furthered.

We also feel that it is very important that the Legislature have power to zone along the highways of the State. This becomes increasingly important at the present time when the State is considering a wide program of freeways and parkways. Without this zoning, we cannot obtain the benefit of these parkways which we would like to have. We would like to have parkways as they have them in New York and the Merritt Parkway in Connecticut. In order to obtain such parkways, it is necessary to zone along their borders. We have included such a provision in this zoning provision.

Are there any questions regarding the zoning provisions?

CHAIRMAN: Have you finished your presentation, Mr. Fifield, or do you want to go on?

MR. FIFIELD: I have, in regard to this particular provision on zoning.

CHAIRMAN: All right. Mr. Cavicchia?

MR. CAVICCHIA: In the present provision, zoning may be effectuated by a municipality through ordinance. Now, I notice that in your proposal there is no provision for the effectuation of zoning by ordinance.

MR. FIFIELD: It is my understanding that the provision which the Legislature may enact into general laws and by which political subdivisions may limit and restrict, would give them the power to authorize political subdivisions to zone by ordinance.

MR. CAVICCHIA: Wouldn't that permit the Legislature to authorize zoning by resolution?

MR. FIFIELD: I don't think so. But if there is any question as to whether it should, it should not be put in in that form. I think the municipalities and the political subdivisions should have the power to zone under the general laws.

CHAIRMAN: I don't think you understand Mr. Cavicchia's question, Mr. Fifield. The existing constitutional provision gives to the municipalities the right to adopt zoning regulations by ordinance; in other words, there is a specific way in which the municipal body must act in order to adopt these zoning regulations, and that is by ordinance. Your proposal is somewhat broader. It does not limit the way in which the municipality may act to an ordinance, and Mr. Cavicchia's question is directed to this—that if the language of your proposal were adopted, the Legislature might authorize municipalities to adopt zoning regulations without public hearing, without advertising, etc. Do you favor that proposition?

MR. FIFIELD: I wouldn't favor that. It seems to me, though, that the Constitution must be expressed in very broad language and that that power can safely be left to the Legislature, to legislate as to just what manner the municipality may—

CHAIRMAN: Well, what we are trying to get is whether there is any significance in the elimination in your proposal of the requirement that zoning regulations be adopted by ordinance.

MR. FIFIELD: No significance at all.

MR. LANCE: Sir, you advocated that the New Jersey Constitution allow the abolition of nonconforming uses after a reasonable time. Is that correct?

MR. FIFIELD: I don't think it does at the present time.

MR. LANCE: No, but you advocate such a change. Do you have any cases where the United States Supreme Court has held that that is a proper exercise of state authority? The Federal Constitution in its Fourteenth Amendment provides that a State shall not deprive any person of his property without due process of law.

MR. FIFIELD: That is correct.

MR. LANCE: Have the federal courts passed on such a provision?

MR. FIFIELD: I couldn't answer that question. I am not familiar with whether there are decisions or not.

MR. LANCE: My point is that regardless of what the New Jersey Constitution might say on that, it would be immaterial if the federal courts held that we as a State violated the Fourteenth Amendment.

MR. FIFIELD: I can't answer your question. I am a lawyer though, and speaking as a lawyer it would seem to me that if it is proper in the public interest to prevent certain uses, it would be just as proper in those preservations of private rights to prevent the continuance of those uses after a reasonable time. If they had proper notice that it was not a proper use, then they could discontinue them after a reasonable time.

MR. LEWIS: Mr. Chairman, I would like to inquire of the witness whether or not he proposes this nonconforming use abolition without just compensation. Let me illustrate. A gasoline station, a store, a business property at a corner—you say the Legislature should have the power within a reasonable time to compel that business house, concern, or individual to cease that business after a reasonable period of time?

MR. FIFIELD: Yes.

MR. LEWIS: And without compensating that party for terminating his business and changing completely the use to which he had put the property?

MR. FIFIELD: I don't see why compensation would be necessary any more than it would be in the original zoning. By zoning we prohibit a person from using his property in a certain way. There may be a question as to what is a reasonable time. It seems to me that a man must have a pretty long time to use the property which

he has built there for obviously the reasonable life of that property. It may be 15 or 20 years.

MR. LEWIS: Here is an established business, let us say. Let's assume he has a 20-year lease or a 99-year lease. The whole future of the business is built up in this particular location. Now, you want to put that party out of business without just compensation. Would that be equitable?

MR. FIFIELD: It seems to me if he has an established business, and probably the reasonable life of the building would be 20 years, we will say, that after the end of 20 years he could properly be asked to discontinue that use if it were not in conformity with the plan and development of the town.

MR. LEWIS: What in your opinion would be a reasonable time?

MR. FIFIELD: I think that would depend. Nobody can define a reasonable time.

MR. LEWIS: Somebody would have to. According to your proposition, the Legislature would have to do it.

MR. FIFIELD: It would depend on how long the building had been there, the condition of the building, etc. It might be 15, it might be 20 years.

MR. LEWIS: The Legislature would then have to resort to special legislation.

MR. FIFIELD: Probably that would be a matter for court decision.

MR. SCOTT BAGLEY: That is a technical question on which I have some information.

MR. FIFIELD: This is Mr. Bagley. He is the Town Planner of Montclair.

CHAIRMAN: Do you want to yield to Mr. Bagley?

MR. FIFIELD: Yes, I would be very glad to.

CHAIRMAN: Would you say, Mr. Fifield, that you are yielding to Mr. Bagley for a moment?

MR. FIFIELD: Yes. Mr. Scott Bagley, who is Town Planner of Montclair, is present and I think possibly he can answer that question better than I can.

MR. BAGLEY: There are seven states in the United States which have legislation to this effect: Kansas, Louisiana, Michigan, Kentucky, and I am not sure of the others.

CHAIRMAN: You mean, legislation or constitutional provisions?

MR. BAGLEY: Legislation.

CHAIRMAN: Not constitutional provisions?

MR. BAGLEY: I really don't know. It has never been tested in any supreme court because it is a relatively new concept. The first state to try it was Louisiana. They put it on this basis, and I believe

that any legislation like this is a legislative, not a constitutional matter, if the basic right is given. For details we are going to have to trust the Legislature to safeguard the rights of any property owner. That is being done, for instance, in Kansas this way: A nonconforming use is not in general a legitimate business; I mean, it is not in a logical business location or it would not be a nonconforming use; it would be in the proper zone anyway. There are many cases where a small store is started up in a residential neighborhood prior to zoning, and it is actually damaging property values. It is not going to help anybody in the whole town to permit that to continue, but under our present regulation there can be no discontinuance of that. Consequently, the Kansas Legislature in 1944 passed a law which stated that in the case of a nonconforming use which under no provisions of a sound planning program could become a conforming use, the city could allow that to continue for a limited period of years as a nonconforming use. By not creating a business district around that, they are granting somewhat of a monopoly to that man. He cannot have competition from across the street, for instance, from another store of similar type. Therefore he is getting a real benefit from this monopoly which is being given to him. In the case of Kansas, the law reads that when a building is 60 years old, but in no case before 15 years from the time of passage of the ordinance, this nonconforming use must be discontinued, and in the Kansas case without compensation, because of two factors—one, that he is being given this monopoly; another, that he can depreciate that on his income tax. And we had no objections by any of the nonconforming users when that was put into effect in Wichita and Kansas City.

In New Orleans, the first law that was tried, there were no objections. It did come up, the period of time had expired—it was postponed because of the war boom in New Orleans. It happened to be in the vicinity of the Higgins Cork Plant and they had a mushrooming of population. Actually, I don't believe that it will be a nonconforming use because it now is a logical business center and will probably be zoned that way.

MR. LEONARD: Let me ask you this question: You made an observation, I believe, in commenting that he had a monopolistic right. In the initial instance that was a property right; he was there first with his property right, and then by reason of the change in zoning it became monopolistic. Isn't that so?

MR. BAGLEY: To some extent, yes.

MR. LEWIS: Let's pursue that a little further. Take your little community store and let's assume you have a man who put his entire life savings into that little store before there were any zoning ordinances. Then, later, a few years afterward, the municipality

adopted a zoning ordinance. Now, certainly if you're going to take that man's property—eventually that's what you're going to do, because you're going to provide that he can no longer operate that property as a store. He built a store. Virtually, what you are doing is condemning his property. You are no longer permitting him to engage in that business. Certainly, you should not do so without justly compensating that small property owner.

MR. BAGLEY: That point should be clarified to this extent—neither Mr. Fifield nor I, nor our committee, has any axe to grind on whether there should be compensation. I believe that that is completely a matter for the Legislature to handle. All we are asking for is the right to have the Legislature make suitable laws, because it is a very damaging factor in every city in the United States. The point I was trying to make was that it has been sufficiently recognized to become law in some states, and we just want the right to be able to pass a law which in New Jersey might well provide compensation.

MR. LEWIS: That is getting back to my question: If you do include a nonconforming use clause, should you or should you not provide for compensation?

MR. BAGLEY: Our own personal opinion is that the Constitution is beautifully drawn and we have worked well under it. If we try to insert laws into our State Constitution, we are going to get into all kinds of difficulty.

MR. LEONARD: Let me ask you if you will: As a part of this Kansas law regulation, is there still the right to change the zoning district, the zoning use in the particular district?

MR. BAGLEY: Any zone may always be changed by proper procedure.

MR. LEONARD: So that the possibility can arise that you may, after a certain number of years, force an individual to give up a nonconforming use, then at a later date the entire neighborhood may change and the zoning use be changed to enable other stores to go in.

MR. BAGLEY: The legislatures in the seven states that have done this have made it only in conformity with a comprehensive adopted plan. With that type of planning, you will not have cases of emergency, I am relatively sure. I mean, modern planning is quite different from planning which has been done in New Jersey up to now.

CHAIRMAN: Any further questions? . . . Mr. Fifield will you resume, please?

MR. FIFIELD: The second provision which we have suggested relates to development and redevelopment of our cities. I will read the suggested provision:

"The acquisition of real property for development or redevelopment of any area in accordance with a plan duly adopted in a manner prescribed by the Legislature, whether the uses to which such area is to be devoted be public or private uses or both, is hereby declared to be a public use. The Legislature shall make laws governing acquisition, use and disposal of such property by an agency of the State or a political subdivision thereof. The Legislature may authorize the organization of corporations or authorities to undertake such development or redevelopment or any part thereof and may authorize municipalities to exempt their improvements from taxation, in whole or in part, for a limited period of time, under conditions as to special public regulations to be specified by law or by contract between any such corporation or authority and the municipality, provided that during the period of such tax exemption the profits of the corporation and the dividends paid by it shall be limited by law."

I believe that the towns and cities, the older towns and cities of New Jersey, not only in New Jersey but throughout the nation, are facing a very serious crisis. Many of these towns have been pretty well built up. There is not much vacant land for future development, and having been built for a long time, many of the buildings are becoming old and dilapidated, and have been allowed to get into disrepair. We find in all of our older cities these blighted areas which are dangerous not only to the area themselves, but to property values throughout the town or city. There areas have been found, but the police power of the municipalities has not been sufficient to stop the spread of this deterioration. It is spreading continually, so that the town is not only losing ratables but is expending considerable money for the support of these areas. For example, there is one small area in Montclair, having a value of \$275,000, where the town is paying \$30,000 more for the services on that area—garbage collection, fire and police protection—than it receives in taxes.

CHAIRMAN: How can you allocate the cost of the fire service to a particular area?

MR. FIFIELD: You can determine the number of calls that have been made in that particular neighborhood during the year.

CHAIRMAN: Is that the basis on which this is calculated, the number of fire alarms in that vicinity? The cost of police service on the same basis would be the number of arrests made in that vicinity?

MR. FIFIELD: I don't know if they have gone into it in as much detail as that, but I think you can find the average cost throughout the town for carrying these services. In this particular neighborhood, the taxes paid are not nearly sufficient to pay for those costs.

CHAIRMAN: I was interested in knowing how the cost was apportioned to that particular neighborhood.

MR. FIFIELD: I think that is determined by taking an average cost per citizen.

CHAIRMAN: Throughout the municipality?

MR. JORGENSEN: One of the reasons is you have more citizens there.

MR. FIFIELD: That is positively true. Yes, that is one reason. However, I think the principal reason is the decrease in the value of the ratables.

MR. JORGENSEN: Or is it further evidence of the fact that poor people have the largest families?

MR. FIFIELD: Of course, in those areas the population is denser. But we don't think it's good for any municipality to have too dense a population in one particular area and everything should be done to scatter the population throughout the town. You will find that in Essex County alone during the last ten years there was a loss of ratables of almost \$300,000,000. We don't believe that this loss of ratables and this increase of cost to the town can continue for an indefinite time. It is bound to bring financial complications and possibly eventual financial bankruptcy to the town, unless some method is found to remedy it. The only method which planners have found today to cure this situation has been to tear down some of these neighborhoods, assemble them by the exercise of the power of eminent domain and rebuild them through private capital or public funds into a well-planned neighborhood.

The more progressive states that have already adopted laws to this end include New York, Michigan, Illinois and Pennsylvania. The highest courts of Illinois and New York have declared that this is a public purpose; that the clearing out of blighted areas which are a damaging influence in the development of the town and its proper plan constitute a public purpose and are in accordance with the State and Federal Constitutions. New York amended its Constitution expressly to permit that. We feel that if the people declare in their Constitution that this is a public purpose, there can be no question that the thought would hold. However, if it is not so declared in the Constitution, they may be able to question as to whether the court will say it is a public purpose or not. For that reason, we think it very essential that the new Constitution contain express provision permitting this redevelopment by the town to protect its future.

MR. JORGENSEN: How would you determine the area that you felt needed development?

MR. FIFIELD: That would have to be determined by the planning board of the town and by the ordinance of the town authorities.

MR. JORGENSEN: If they thought that a certain area didn't fit in with the scheme, either architecturally or otherwise, they would want the right to redevelop it?

MR. FIFIELD: Yes. If it didn't conform to the overall plan

they had adopted for the town, they would want the right to redevelop it.

MR. JORGENSEN: Wouldn't that lead to a great deal of possible abuse?

MR. FIFIELD: I think that any enabling law the Legislature might pass would undoubtedly restrict the right of these towns in certain definite neighborhoods. We feel that that would be a detail the Legislature should place in the laws and that it should not be restricted in the Constitution.

MRS. MYRA C. HACKER: Do I understand, Mr. Fifield, that you endorse the principle of the New Jersey Federation of Official Planning Boards?

MR. FIFIELD: Yes. We are working toward the same end that they are. I think that our propositions may be a little more concise and a little more satisfactory.

MRS. HACKER: Have you sent a copy of your proposition to the delegates, or are you submitting it to me?

MR. FIFIELD: Yes. We have sent a copy to each of the delegates.

MRS. HACKER: I haven't received it.

MR. FIFIELD: I will be glad to give you a copy now.

MRS. HACKER: There are just a few comments I would like to make on this subject. First of all, you mentioned rather casually you did not know whether this was a subject for constitutional provision or not. How, as an attorney, do you feel about it? What is your essential idea of what should be in the Constitution?

MR. FIFIELD: Are you talking about zoning or redevelopment?

MRS. HACKER: Both.

MR. FIFIELD: It seems to me that zoning has now become almost universally recognized as a proper public exercise of government. But because of adverse decisions in the New Jersey courts, which made it necessary to adopt the amendment of 1927, I feel that it would be essential to have in the new Constitution an express provision permitting zoning, because without that the New Jersey courts might very well follow the precedents which they have already established.

I feel the same way in regard to a redevelopment provision. This is a fairly new adventure in town and municipal planning. We do not know just what position or course to take. I think that until that can be determined something should be expressly permitted in the Constitution.

MRS. HACKER: I see. Well, outside of zoning that we already have in our present Constitution, you would like planks on planning and conservation, protection of the public interest in public property, erection of structures, proposed location of streets, public

lanes and places, low rent housing, as I understand it, slum and blight elimination and redevelopment corporations or authorities. Do you feel that all those things have a place in our fundamental laws?

MR. FIFIELD: I think that most of those provisions are covered by the provisions which we have suggested. I think our provisions are somewhat broader than those suggested by the New Jersey Federation of Planners, but not broad enough to cover the separate provisions which they have suggested to us, with the exception of low cost housing.

MRS. HACKER: As an attorney, would you agree with me that a good Constitution is limited to principles and provisions for governmental organization, and that it guarantees the right, in the light of experience, to enlarge and restrain powers in governmental bodies?

MR. FIFIELD: I certainly do.

MRS. HACKER: And you think that those things should come in?

MR. FIFIELD: As I say, in view of the decisions of some of our courts in New Jersey I think it becomes necessary to grant those powers in the Constitution.

MRS. HACKER: May I read into the record at present a copy of part of the letter sent to the Bergen County delegation dealing with this matter of planning and written by one of the directors of New Jersey Federation of Official Planning Boards:

"Mr. John R. Burnett, Secretary
New Jersey Federation of Official Planning Boards
Room 2800, Raymond-Commerce Building
Newark, New Jersey.

Dear Mr. Burnett:

I read with regret the change in the suggested section 'Planning and Conservation' made by the Federation members at the meeting when the committee's proposals were submitted. The inclusion of the last phrase 'and to that end, etc.' specifically stamps the section as socialistic in the extreme, and will cause the Convention delegates to review the whole Federation program with caution. As I understand, they are scrutinizing all suggestions bearing provisions that could bring about a further centralization of power and control over private property.

Very truly yours,

A. Thornton Bishop
A Member of the Executive Group
of the State Planning Board."

Now, do you feel that these provisions will lead to a centralization of power and further control over private property?

MR. FIFIELD: No, I don't feel that at all. It seems to me that in modern times, as cities grow in size, we have to control the use of private property, perhaps more than we have done before. But there's nothing in these provisions that would interfere, as I would

see it, at all with the rights of private property. Private property must always be subordinated to public uses.

MRS. HACKER: Within certain definite limitations?

MR. FIFIELD: Yes. We have set forth those limitations.

MR. LEWIS: You are going to leave us, are you not, a copy of your proposal?

MR. FIFIELD: Yes.

MR. JORGENSEN: I would like to ask the speaker whether or not he recommends giving counties the right to zone, also?

MR. FIFIELD: I do. As I said before, it seems to me there are certain areas in the State which cannot be reached by municipal zoning, and that counties should have that right. With proper legislation there should be no interference between the county planning boards and the municipal planning boards.

MR. JORGENSEN: You mean, you would leave it up to the Legislature to endeavor to reconcile the differences that inevitably would arise between the county planning board and the municipal planning board?

MR. FIFIELD: Yes, I think it might well pass a law that county planning boards should have authority in those parts of the county where municipal planning boards have not been established.

CHAIRMAN: Any further questions?

MR. FIFIELD: There is one short provision that I would like to refer to—it is a more or less technical provision—in regard to street maps:

“The Legislature may authorize municipalities to adopt an official map showing the location of the public streets and other public ways and places which it is intended to establish in the future, and may enact reasonable regulations concerning the erection of any building or structure in such location after the adoption of such map.”

I believe this is now permitted by law in this State, but considerable question has been raised with regard to its constitutionality. We feel that that is a very important power the municipality should have—it should be able to adopt a street plan and make that a matter of public record. Having adopted the plan, nobody should be able to build, erect any building, etc., on those streets unless subject to such reasonable regulations as the town might impose.

MR. LEWIS: Isn't that now inherent with the Legislature and the municipalities? Why incorporate any such provision in the Constitution?

MR. FIFIELD: It now is, but there is considerable question among attorneys in the State as to the constitutionality and we do not believe it would be upheld by the courts without a provision in the Constitution.

MR. JORGENSEN: We can't reconcile all differences of legal opinion.

MR. FIFIELD: That is true, but when you have a question on which attorneys may be almost universally agreed—

MR. JORGENSEN: That will be the millenium, when all attorneys are agreed.

MR. FIFIELD: If any of you have not received a copy of these proposals, I have some copies here I will be glad to give you.

CHAIRMAN: Will you leave them with the Secretary, Mr. Fifield?

Are there any further questions? Thank you very much, Mr. Fifield. . . . I now declare a recess until 1:45.

(Recess for luncheon at 12:50 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Wednesday, July 2, 1947

(Afternoon session)

(The session began at 1:50 P. M.)

PRESENT: Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Morrissey, O'Mara, Proctor and Sanford.

Chairman Edward J. O'Mara presided.

MR. EDWARD J. O'MARA, CHAIRMAN: The meeting will come to order. Mrs. Sanford has been kind enough to suggest that if any of the gentlemen wish to remove their coats, it will be perfectly agreeable to the ladies.

The next speaker who is listed is Francis X. Fahy. Mr. Fahy, will you state your name for the record and the organizations that you represent, please?

MR. FRANCIS X. FAHY: My name is Francis X. Fahy. I represent the Associated Veterans and Fraternal Groups of Hudson County.

Mr. Chairman and members of the Legislative Committee of the Constitutional Convention:

At the outset I should like to thank each of you for the opportunity of addressing this Committee. It is indeed indicative of your determined and sincere effort to reflect in your recommendations the will of all the people that you invite people such as myself to come here today.

I come here this afternoon as chairman of a group of veterans' organizations, and I should like to indicate to you just what organizations they are:

The Homer Harkness Marine Corps League
General Mercer Chapter No. 33, Military Order of the Purple
Heart
Msgr. A. L. Adzema Post, Catholic War Veterans
All Saints Memorial Post
Hilltop Amvets Post
Hudson City Post
Post No. 37, Jersey City
Post No. 465, Assumption
Gold Star Wives, Hudson County Chapter
Greenville Post No. 1170

Greenville Amvets, Inc., New Jersey Post No. 2
Hudson County Chapter, Catholic War Veterans
Conception Post No. 1188
Chin Strap Post, 29th Division
Junction Post, American Legion
Disabled Veterans Alliance

It is their views that I express; it is on their behalf and on my own behalf that I appeal to you for your consideration.

It is imperative and prudent that we dispel at once the common misconception that gambling is morally wrong. The State of New Jersey has taken official cognizance of the fact that gambling is not immoral by legalizing pari-mutuel betting at race tracks. Upon reflection, it must be seen that there is nothing inherent in gambling that contravenes the moral law; there is nothing intrinsically evil in gambling, for gambling is but "the playing of a game for a stake" or "wagering something of value upon a chance." Such being the case, no law, no constitutional amendment, can make it wrong.

Prior to 1939 gambling in all forms was prohibited in this State. Then, as we all know, by an amendment to the Constitution wagering at race tracks was legalized. This placed New Jersey in the ridiculous position of saying, in effect, that it is proper to wager something of value on a chance at race tracks, but if you dare to go across the street and engage in a game of cards in a private home, or if you purchase a lottery ticket upon a hat, you are a lawbreaker. You are doing something illegal. This is pure and unadulterated hypocrisy. It has been recognized as hypocrisy by the people of the State for some time, but nothing has ever been done effectively to voice public opinion on this matter until this Constitutional Convention was summoned into session. Now Mr. Average Citizen, Mr. Veteran, Mr. Member of a Fraternal Order, are calling upon you, the members of this Committee, to right the wrong that is being perpetrated upon them by an archaic edict.

The wrong I refer to is the deprivation of the means of raising necessary revenue by sponsoring bingos at carnivals and bazaars, and raffles properly sponsored and supervised by recognized, responsible organizations. It is further evidence of the hypocrisy of the gambling laws that prevail in this State that the federal tax authorities see fit to tax a New Jersey resident should he have the good fortune to win, say, the Irish sweepstakes. His prize money is taxable. Illicit money, New Jersey would call it, money obtained by breaking the law, because by sharing or participating in a lottery he has done something illegal. And yet New Jersey seeks to share in the profits of his illegal action—further evidence, I would say, of hypocrisy.

Members of the Legislative Committee, we have neither the desire nor the financial means to support a lobby such as put over the racing amendment in this State. Yet we have the most powerful lobby of all, the lobby of public opinion, a lobby which cannot, a lobby which will not, be denied.

Let us travel for a moment in retrospect to the disgraceful days of Prohibition. We all know that drinking liquor is not in itself wrong, and a constitutional amendment neither made it wrong nor put an end to drinking. It only succeeded in promoting the most lawless era in our nation's history. Drinking is wrong only when indulged in to excess, and we have learned the hard, bitter way that legislation cannot control the extent of a man's drinking. With this bitter experience of Prohibition to benefit from, let us not persist in the folly that gambling should be outlawed by legislative decree, particularly since we now by legislative decree permit race track gambling. Would anyone have the temerity to label as harmful the sociable gambling that is properly conducted at functions sponsored by recognized and responsible veterans', fraternal, religious or charitable organizations? To continue as illegal these activities is to toll the death knell of veterans' groups, for veterans' groups derive their main source of revenue from functions such as these. And this revenue is used to promote necessary welfare work among their members.

Gambling becomes harmful only when it is indulged in to excess, or when it embodies some element of trickery or fraud. I therefore propose that the present gambling laws be amended, be revised so as to permit gambling for charitable purposes, provided such gambling is conducted under the supervision and sponsorship of recognized and responsible organizations such as veterans' groups, fraternal, religious or charitable institutions. Mark well that I do not by any means advocate unrestricted wide-open gambling, but rather gambling that is devoid of trickery and fraud, gambling that is not conducive to the corruption, collusion or connivance of public officials, gambling that is unattractive to racketeers, gambling that affords a pleasant means of contributing to worthy causes.

As presently written and unenforced, our gambling laws make it possible to indict most of the municipal and police officials of the State of New Jersey for nonfeasance in office. It is an open secret that our prosecutors and our police are reluctant to enforce laws which they rightfully appraise as oppressive and as discriminatory. What valid reason, then, can there be for sustaining a law that is generally regarded as opposed to the common good? I am sincerely of the opinion that the average person in the State of New Jersey is not fully aware of the full import of our present gambling laws. I do not believe, for example, that he thinks it is unlawful for him

to play a game of cards in his home, which it is. He does not believe that it is illegal for him to participate in a door prize at a social function, but it is. I think part of our program is to educate the people of this State to the laws as they are presently written and as they might be enforced.

In view of the facts, then, members of this Committee, that I have briefly indicated here today, I briefly and respectfully submit that this Committee has no choice but to execute what amounts to a mandate of the people, a mandate of our veterans, by recommending the revision of the gambling laws as outlined in the resolution which I forwarded to each member of this Committee, to Governor Driscoll, and to Dr. Clothier.¹

I am confident that the voice of the people will not go unheard or unheeded.

"RESOLUTION TO AMEND NEW JERSEY GAMBLING LAWS

WHEREAS, the American Legion, the Veterans of Foreign Wars (V.F.W.), the Amvets, the Disabled American Veterans (D.A.V.), the Marine Corps League, Purple Heart, Spanish-American Veterans, Chin Strap Post, 29 Div., the Jewish War Veterans (J.W.V.) and the Catholic War Veterans (C.W.V.) are organizations comprised of men and women who honorably served in the Armed Forces of the United States during World Wars I and II and are in agreement with the Gold Star Wives;

WHEREAS, it becomes necessary for the individual posts of said veterans' organizations to sponsor carnivals, raffles, bazaars and other social functions in order to realize revenue destined for charitable purposes and to keep said posts in existence;

WHEREAS, gambling *per se* is not in and of itself immoral;

WHEREAS, the State of New Jersey by an amendment to its Constitution has proved that gambling is not inherently evil by legalizing horse racing and wagering at its three race tracks, no receipts from which ever being used to promote any charities;

WHEREAS, the various veterans' posts throughout the State cannot continue to exist merely on the dues of their members without the aid of this outside revenue derived from the above mentioned carnivals, bazaars, etc.;

WHEREAS, these same veterans' posts do not think that the people of the State of New Jersey intend or desire that their posts be dissolved because of lack of revenue,

NOW, THEREFORE, BE IT RESOLVED by the subscribing posts of the American Legion, the Veterans of Foreign Wars (V.F.W.), the Amvets, the Disabled American Veterans (D.A.V.), Marine Corps League, Purple Heart, Spanish-American War Veterans, the Jewish War Veterans, the Catholic War Veterans and the Gold Star Wives, that the New Jersey State gambling laws be amended at the forthcoming Constitutional Convention as to permit gambling for charitable purposes, provided such gambling is conducted under the sponsorship and supervision of only recognized, responsible organizations, such as established veterans' organizations, fraternal societies, churches and charitable institutions; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to Governor Driscoll, to each delegate to the Constitutional Convention and to Mayor Frank Hague and Mayor-Designate Frank Eggers of Jersey City, and to the Veterans' Alliance of Jersey City.

Dated: June 13, 1947."

CHAIRMAN: Will you leave a copy of your transcript with the stenographer?

¹ The resolution which follows was included in the record.

Does any member of the Committee desire to ask Mr. Fahy a question? Senator Lewis?

MR. ARTHUR W. LEWIS: Mr. Fahy, would your proposal eliminate the hypocrisy which you claim exists if you propose merely to extend the right of gambling from race tracks to churches, fraternal organizations, etc.? By merely extending the law there is still the alleged hypocrisy you speak of, because then it would be illegal, for instance, to have a private game of cards in your own home if there be a gambling element.

MR. FAHY: I would say this, Senator—that the purpose, our purpose, in restricting or in suggesting that it be restricted to particular groups for particular purposes is simply to outlaw the possibility of trickery or fraud. Certainly we have no objection in the way that you suggest, for example, the game of cards in the home; but our objection and our thought, our underlying thought, our basic thought in restricting it to supervised and properly sponsored gambling is to outlaw the possibility of trickery or fraud. I would say that my draft is incomplete in that it does not make provision for gambling such as you refer to. But I certainly am in favor of permitting such activity as you suggest.

CHAIRMAN: Are there any further questions?

MR. CHRISTIAN J. JORGENSEN: Do you believe there should be any provision in our proposed Constitution with respect to gambling?

MR. FAHY: Yes, I do.

MR. JORGENSEN: Aren't you being contradictory in your position?

MR. FAHY: If I am, I would appreciate your indicating the contradiction. I am not aware of it.

MR. JORGENSEN: First you prefaced your remarks by saying that gambling in and of itself is not immoral.

MR. FAHY: That is correct.

MR. JORGENSEN: Then you went on to say that gambling should be permitted for certain purposes which you outlined. Your article or proposal as submitted suggests that by constitutional provision only such gambling as is conducted for charitable or fraternal organizations should be permitted, and it should be done by constitutional provision.

MR. FAHY: Yes.

MR. JORGENSEN: Do you believe that?

MR. FAHY: Yes, I do. I should—

MR. JORGENSEN: If gambling is not immoral as such, why should it be limited to any particular group?

MR. FAHY: I attempted to extend my remarks to Senator Lewis by saying that the purpose in restricting it to particular groups

was only for the purpose of outlawing the possibility of trickery or fraud, not for any other purpose. As I say, my proposal was obviously inadequate and did not go far enough to permit such a thing as the game of cards Senator Lewis suggested.

MR. JORGENSEN: Let me reiterate then—why do you feel that any provision belongs in the fundamental law of the State?

MR. FAHY: Well, as the Constitution stands now, we have an amendment permitting only pari-mutuel wagering. Is that correct? And my thought is that we make definite provision so that types of gambling which do not involve trickery or fraud and which are not conducive to corruption and collusion be provided for in the Constitution in the same way that race track wagering is now provided for.

MR. JORGENSEN: Do you not feel that it would be more adequately provided for by complete elimination from the Constitution and by being left entirely to legislative control?

MR. FAHY: I think that whether or not it would be is not the paramount issue at this time. I think that the need for handling this situation is immediate and urgent, and that to refer it to legislative action would defer action on the matter an unreasonable length of time. As far as veterans' organizations are concerned, time is of the essence.

MR. JORGENSEN: We have had this restriction constitutionally now for over a hundred years in the present document. Is time of such great urgency at this particular moment that it cannot be left to legislative policy?

MR. FAHY: Well, I do think, for one thing, we never before had the great number of veterans' posts that we now have. I further think that there is no point in saying that because the law has been violated in the past, that we should be constrained to continue to violate the law and to impose upon our municipal and police authorities the blame and the guilt of not properly enforcing their duties.

MR. JORGENSEN: Those are all side issues. What I would like to know is whether or not you honestly feel that any gambling provisions that are by way of limitation or by way of expansion belong in our Constitution.

MR. FAHY: I most certainly do. I think that the gambling situation has aroused and will arouse more discussion throughout the length and breadth of this State than any other issue that will be considered in constitutional revision. I think the public at large, the individual, the small fellow, is greatly concerned with it, and I think that provision should be made to take care of his needs and his desires.

MR. JORGENSEN: Would your organizations be unwilling to

leave to the Legislature the question as to how and what types of gambling would be permitted?

MR. FAHY: We are opposed to letting the matter rest with the Legislature at all. Our preference would be to have it dealt with in the Constitution.

MR. JORGENSEN: Of course, you realize that by taking the position that the Constitution should only set forth the principle, you would still need legislation to change the gambling laws as they presently exist, so there would be no time saved.

MR. FAHY: Well, could we by legislation, for example, change the racing amendment?

MR. JORGENSEN: Yes, you could, if it is left out of the Constitution as it stands today.

MR. FAHY: You mean, writing a new Constitution in which there would be no provision for any type of gambling?

MR. JORGENSEN: Legislation could eliminate horse racing today.

MR. FAHY: In a new Constitution? After a new Constitution has been adopted, is that so?

MR. JORGENSEN: That's right.

MR. FAHY: And your suggestion—or your advice, rather—is that in the event a new Constitution were adopted containing provision for gambling, that the manner and the extent of it would necessarily be left to legislative determination?

MR. JORGENSEN: They would have to draw the rules and regulations. They would have to amend the present gaming laws to permit it.

MR. FAHY: Well, am I incorrect in assuming that if there were a new Constitution, by the very fact of its coming into existence it would amend the present gambling laws?

MR. JORGENSEN: You are incorrect in that assumption. We could leave out any provision in the Constitution with respect to gambling and it would not in any manner change the present gambling laws in the State of New Jersey until and unless the Legislature acted upon the present laws. It was for that reason that I put the question to you, whether or not you felt there was any real reason for any provision whatsoever with respect to gambling in our Constitution.

MR. FAHY: Well, I feel that such being the case, certainly a provision in the Constitution would perhaps speed action by the Legislature.

MR. JORGENSEN: The only thing the Constitution could do if it followed your suggestion would be to authorize the Legislature to do so. If they failed to act you still would not be in any better position than you are today.

MR. FAHY: I'm afraid I am not certain as to just what the import of your remarks is. In the new Constitution, if provision were made for gambling, if gambling in addition to the present race track wagering were to be permitted, is it your advice that the present gambling laws would still obtain?

MR. JORGENSEN: Yes, they would, until they were amended or declared in contravention of our Constitution.

MR. FAHY: Well, wouldn't the adoption of the new Constitution overrule an existing amendment?

MR. JORGENSEN: Not until that had been so adjudicated.

MR. FAHY: The adoption of the new Constitution by the people would not be sufficient?

MR. JORGENSEN: That is correct. The statute law remains the law until it be nullified by act of the Legislature or judicial determination.

MR. PERCY CAMP: I don't think we all agree with that.

MR. FAHY: I don't think so either. In fact, I am in hearty disagreement with you.

CHAIRMAN: Any further questions?

MR. WESLEY L. LANCE: I don't know of a constitution in the United States which expressly states that gambling shall be legal. Most all of them say that (1) the legislature shall never legalize gambling of any kind, or (2) the legislature shall never authorize gambling except for certain items. I don't know of a single constitution in America that comes right out and says that gambling shall be legal or certain types of gambling shall be legal without the Legislature so stating.

CHAIRMAN: Senator Lewis?

MR. LEWIS: Mr. Chairman, I would like to correct the deduction of the witness, Mr. Fahy. In asking these questions, Mr. Fahy, I am trying to get from you your reasoning on the subject and not expressing an opinion myself. By asking these questions, I am not stating that I favor or disfavor the authorization of any type of gambling.

I would like to ask you this question: Would you favor leaving the whole question of gambling up to the local people as a matter of local option?

MR. FAHY: No, I would say that we would not. We would not favor that.

CHAIRMAN: Any further questions? Thank you very much, Mr. Fahy. Will you leave your transcript with the stenographer?

The next witness listed is Mr. Peter T. Furey. Mr. Furey, will you state your name for the record and the organization that you represent.

MR. PETER T. FUREY: Mr. Chairman, ladies and gentlemen:

My name is Peter T. Furey and I am representing the Hudson County Holy Name Federation of the Newark Diocesan Federation. I am here in the interest of the liberalization of our present laws pertaining to fund-raising activities. The Hudson County Holy Name Federation, as of last October, represented 93,000 Holy Name men of 53 Roman Catholic parishes. I want to try to estimate to this Committee that these 93,000 men in my opinion represent approximately 250,000 adults in the County of Hudson.

We all know that the Legislature has legalized pari-mutuel horse betting within this State. We feel that gambling itself, if not indulged in to excess, is not evil. I have come here today with a copy of a resolution from the Hudson County Holy Name Federation, a copy of which I feel sure has been received by every member of this particular Convention. With your permission I will read it. This was sent to all members of this Convention on June 12:

"WHEREAS, on Tuesday, June 3rd, 1947, the citizens of the State of New Jersey voted decisively that a Convention be held to revise the Constitution of the State of New Jersey;

1. WHEREAS, the State of New Jersey by an amendment to its Constitution has legalized pari-mutuel betting on horse racing within the State; and
2. WHEREAS, gambling itself, if not indulged in to excess, if there be no element of fraud, and if the persons who spend their time thereat engage in it as a pastime, is not intrinsically evil and no legislation can make it wrong; and
3. WHEREAS, persons of normal intelligence, who appreciate that the social affairs at which stakes are occasionally presented are merely for a pastime or to furnish a pleasant occasion to make contributions to worthy causes, do not commit a moral wrong; and
4. WHEREAS, unfortunately, the manner in which most of the basic laws in our State were framed goes back to views prevailing in the original colonies which considered all gaming as intrinsically evil; and
5. WHEREAS, the solution to this problem would be best achieved by a wise restatement of laws bearing upon the subject in the light of sound reason and a proper conception of law itself, which has been aptly defined as an ordinance of reason enacted and promulgated by those who have authority in the community for the common good; and
6. WHEREAS, many fraternal, civic, patriotic and religious organizations have been conducting carnivals, bazaars and other fund-raising functions in order to raise revenue to carry on their charitable work; and
7. WHEREAS, we believe that the delegates to a Constitutional Convention should approach this matter, not emotionally, but by a process of adequate study; and,
8. WHEREAS, the prevailing laws, if strictly enforced, would prevent the members of a family from having a game in their own home;

Now, THEREFORE, BE IT RESOLVED, that we, the delegates to the Hudson County Holy Name Federation, representing approximately 93,000 men and members of their families, of 53 Roman Catholic parishes, appeal to the duly elected delegates to the Constitutional Convention meeting in New Brunswick, that consideration be given to permit gambling for charitable purposes, provided such gambling is conducted under the supervision and sponsorship of recognized responsible organizations, such as churches, veterans' groups, service clubs and charitable institutions; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Honorable Alfred Driscoll, Governor of the State of New Jersey, to the delegates to the Constitutional Convention, to the Honorable Edward O'Mara, Senator of our county, to each of the Assemblymen representing

our county, and to Horace Roberson, Prosecutor of Hudson County, and to the mayor and governing body of every municipality in Hudson County."

CHAIRMAN: Does any member of the Committee desire to ask Mr. Furey any questions? . . . Thank you very much, Mr. Furey.

The next speaker listed is Maurice A. Walsh, Jr. Mr. Walsh, will you please state for the record your name and what organizations, if any, you represent?

MR. MAURICE A. WALSH, JR.: Mr. Chairman and members of the Committee:

My name is Maurice A. Walsh, Jr. I am the Judge Advocate of Post Number 758 of the Catholic War Veterans. Incidentally, that post is the largest Catholic War Veterans' post not only in the State of New Jersey but in the entire country. I am representing the members of my post today in addressing you members of the Committee here on the subject of gambling.

I intend to re-echo the sentiments of Mr. Fahy who addressed you a few moments ago. It is our thought that gambling inherently is not immoral and it is only made illegal by legislation. We do not espouse the thought that, nor do we wish the members of this Committee to think that, we wish to have the gambling laws enacted so as to permit professional gambling in this State. We are as much against that as anyone else. But we do appeal to you people on this Committee to allow our post and similar veterans' posts in the entire State, whether they be Catholic, Jewish, American Legion or non-sectarian posts of any sort—we appeal to you people to allow us to run bingos, raffles and other charitable games of chance in order to keep our posts in existence. We do not think that the people of this State intend that the veterans' posts should be dissolved because of lack of revenue, but that is exactly what will happen unless we can do something to increase our revenues. We cannot exist on our dues alone. We charge a dollar or two dollars a year and that amount is insufficient to keep us in existence. We need outside revenues. So we are appealing for a revision of these gambling laws to allow us and other similar veterans', fraternal, charitable and church institutions, to conduct this type of gambling.

I sat here this morning and I heard quite a bit of argument *pro* and *con* on this gambling. I heard that business recessions were caused in the State of California because they had gambling. I defy any man to tell me why any business recession occurs. We have expert economists in this country, and as many as we have, as many different reasons for recessions are given to us. So it can't be traced directly to gambling.

Now, another point brought up is that we are being inconsistent. I do not think we are being inconsistent when we say that we

espouse charitable gambling but have only disdain for the professional type of gambling. I do not think that is inconsistent. A former speaker here this morning said that the people of the State of New Jersey are opposed to gambling; in other words, that they are opposed to our ideas. However, the only time that this question was put before the people of this State was, I think, in 1939 when pari-mutuel betting was passed, and certainly the majority of the people determined that pari-mutuel betting was for the good of the State. I think if it were put to a test again, these same people who passed this legislation would be for this constitutional amendment which I am espousing to you.

That is all, Senator.

CHAIRMAN: Does any member of the Committee desire to ask Mr. Walsh any questions? Senator Lewis?

MR. LEWIS: Mr. Walsh, you make your point quite clear that you are opposed to professional gambling and that you are in favor of charitable gambling. Now, are you for or against non-professional, non-charitable gambling?

CHAIRMAN: For instance, private games in the home of a citizen, or something like that?

MR. LEWIS: Yes.

MR. WALSH: I think I shall give the same answer that Mr. Fahy gave. When we came down here today we were not prepared for that particular type of question; in other words, it is something that we didn't consider. We were looking at this thing from our own viewpoint. However, putting the question to me, I think we would be in favor of allowing games at home.

CHAIRMAN: Does any other member of the Committee desire to ask any questions of Mr. Walsh? . . . Thank you very much, Mr. Walsh.

The next speaker listed is Reverend Paul A. Friedrich. Doctor, will you please for the record state your name and the organizations that you represent?

DR. PAUL A. FRIEDRICH: My name is Paul A. Friedrich. I am the pastor of the First Methodist Church of New Brunswick. I represent my church and the New Brunswick Council of Churches which is a body of 26 Protestant churches in the New Brunswick area. I am also a member of the Committee of World Peace and Social Justice of the New Jersey Conference of the Methodist Church, and I believe there is no other representative here from the New Jersey Methodist Conference. I have a statement here, and then some extemporaneous remarks to make:

"Gambling is a moral disease that time and again has infected public life. Every enlightened moral code has repudiated it, and every body of law has tried to control or outlaw gambling.

Gambling is a destroyer of character. It keeps company with indolence,

crime, and immorality. It promotes a 'get something for nothing' attitude. Gambling undermines the efforts of schools and churches to produce citizens who depend upon character, industry, and honesty for a successful life.

Any game or device which encourages gambling contributes to these evil results.

The purposes to which the profits of gambling are put does not change the detrimental effects. Therefore, bingo and raffles, often conducted by some churches and charitable organizations, stand condemned as a menace to the public welfare, and serve to defeat the purpose of the character-building agencies in a community.

If this Constitutional Convention will submit to the people the same provision on gambling as is found in the present State Constitution, it will be serving the public good, and will be following the desires of the majority of the citizens of the State of New Jersey.

In addition, if it can be done by this Convention, I would like to see both the pari-mutuel and the bingo issues submitted to the people in the form of an amendment."

CHAIRMAN: Does any member of the Committee desire to ask any questions?

DR. FRIEDRICH: I would like to make several other statements.

MR. LEON LEONARD: Doctor, may I ask if by your last statement you mean, over and above the document that this Convention will submit to the people concerning all phases of constitutional revision—do you suggest a separate treatment of the proposition dealing with gambling?

DR. FRIEDRICH: Yes. There are two issues, as I understand it, generally being discussed here—pari-mutuel and bingo. Can that be done? May I ask that as a point of information?

CHAIRMAN: That depends on the Convention itself, Doctor, as I understand it.

DR. FRIEDRICH: I see.

CHAIRMAN: The Convention has the power to determine how the proposed amendments to the Constitution, or the proposed Revised Constitution, shall be submitted to the people—either in one parcel or in separate parcels. That is my understanding, at least.

MR. LEWIS: Mr. Chairman, I would like to get clear in my mind the Doctor's thought on this subject. Do I understand correctly that you propose that any Constitution drafted by this Convention be submitted to the people without any reference whatsoever to gambling, and then two separate amendments or proposed provisions, one favoring gambling as a constitutional right, and the other disfavoring gambling as a constitutional right?

DR. FRIEDRICH: Yes. My first choice would be that the matter not be in the Constitution itself, but that it be submitted as an amendment. I think this is a public issue and people want to have something to say about it, and they ought not to be compelled to

repudiate the whole Constitution just because they are opposed, as I am, to pari-mutuel or bingo.

I would like to say in addition that there has been a good deal of confusing of the issue here as to what gambling is. It is a very common policy to think that life is a gamble and therefore games of chance are a gamble, and that they are all in the same category. It is not true. A gamble and the thing that we have been talking about here and opposing is the setting of an artificial risk for the sake of the risk itself. In life we try to avoid risks. It is a gamble to go down the street, but you try to avoid every risk that you possibly can. In the matter of comparing bridge at home to the issues that we are talking about here, I think that is again confusing the issue. The man who has a bridge party at home isn't inviting in the public and reaping profits for himself or for his family.

In the matter of control, someone mentioned here this morning that you couldn't eliminate gambling—therefore you ought to control it. Well, that is the same as saying that you can't eliminate prostitution and therefore you ought to promote a law allowing a little prostitution. To leave this to the Legislature as an annual matter, it seems to me, would be to submit the Legislature each year to a set of pressure groups, and that would be a very unhealthy procedure.

On the question that necessary revenue is raised by bingo and therefore bingo ought to be legalized, let me say this: Any institution, charity, church or otherwise, that cannot be supported by voluntary contribution does not deserve to continue to exist, and that goes for veterans, churches, or anything else.

On the moral issue, I would say that the people who say that there is nothing morally wrong with gambling and yet all these identify gambling with trickery or fraud are thereby raising a moral issue. You cannot have gambling without trickery or fraud, and therefore it becomes a moral issue.

MR. JORGENSEN: Would you mind telling us whether or not you feel that any provision with respect to gambling, either prohibiting it or permitting it, should be in the fundamental law of the State?

DR. FRIEDRICH: As an amendment—

MR. JORGENSEN: I mean, insofar as this Committee is to recommend a draft?

DR. FRIEDRICH: Yes, I would prohibit it in the Constitution.

MR. JORGENSEN: I am not talking about the merits of it, Doctor. Don't misconstrue me insofar as that's concerned. I am only concerned about whether or not you actually believe that the Constitution itself is any place for a provision with respect to gambling, for or against.

DR. FRIEDRICH: If, let me ask you, it is not in the Constitution itself, but only as an amendment in regard to those two issues, all other gambling is then permitted?

MR. JORGENSEN: I am not so sure I can answer that in a couple of words, but all other gambling today is governed by statute, including race tracks.

DR. FRIEDRICH: What I would like to see is a provision in the Constitution that gambling be prohibited, and then as amendments these two issues submitted separately.

MR. JORGENSEN: Doctor, you mention prostitution. Do you feel that gambling is a greater vice, if you want to label it that, than prostitution?

DR. FRIEDRICH: I think that gambling is morally questionable.

MR. JORGENSEN: More so than prostitution?

DR. FRIEDRICH: I would put them on about the same plane of moral evil and say that the business of law is to promote good, not evil, and it is to legislate for good and not for things that are questionable.

MR. JORGENSEN: Doctor, I am not an advocate of either one, but what I would like to know is if you feel that they are on an equal footing? Do you feel that we would curb prostitution, if such exists in the State, by incorporating a provision against it in our Constitution?

DR. FRIEDRICH: I do not know exactly what the means are in the State or in municipalities or counties for curbing prostitution. I don't know what the legal basis of the prohibition is.

MR. JORGENSEN: Well, assume then, for the purpose of discussion, that it is prohibited—which it is—and gambling is likewise prohibited. Would you not be willing to let the rest of the control, the operation, the enforcement of our laws with respect to gambling, prostitution, or any other vice remain up to the Legislature?

DR. FRIEDRICH: I would say that there is not the unanimity of opinion on the evil of gambling that there is on the evil of prostitution.

MR. JORGENSEN: I will grant you that, Doctor, and that is all the more reason why the question is important as to whether or not it belongs in the fundamental law of the State. If there is such great diversity of opinion with respect to it, should it not properly rest in the laps of the legislators, who are the effective spokesmen of the people of the State at large.

DR. FRIEDRICH: I think the same purpose would be achieved by putting in an amendment which from time to time could be reviewed.

MR. JOHN L. MORRISSEY: Mr. Chairman.

CHAIRMAN: Senator Morrissey.

MR. MORRISSEY: Doctor, would you for my purposes, give me your definition of a matter that is morally wrong, and distinguish it?

DR. FRIEDRICH: A matter that is morally wrong?

MR. MORRISSEY: You have described gambling in the sense that you thought it was morally wrong, and for my own purposes I would like to know what your interpretation or what your basis is for saying any crime is morally wrong.

DR. FRIEDRICH: I conceive of morality in terms of human beings. That which tears down rather than builds up character or life at its best is morally wrong, and I put gambling in that class.

CHAIRMAN: Any further questions?

Doctor, I have one question. I don't know whether I understood you correctly or not, but I think you said that you cannot have gambling without trickery or fraud. Did I understand you correctly?

DR. FRIEDRICH: That is correct.

CHAIRMAN: On what do you base that?

DR. FRIEDRICH: I base it on the experience of gambling as a public practice across the centuries. The two go together just like measles and marks on your face.

CHAIRMAN: You mean, commercial gambling always brings with it trickery and fraud, or do you mean that gambling in and of itself connote trickery or fraud?

DR. FRIEDRICH: It does not necessarily connote trickery or fraud, but you cannot have one without the other and I think the experience of the community will bear that statement out.

MR. MORRISSEY: Doctor, one more question: What do you think is the greatest code of morals in existence? The Ten Commandments?

DR. FRIEDRICH: I think it is Biblical: the Ten Commandments plus the New Testament, in which a person is put up as the supreme goal in life and whose rights and interests this Constitutional Convention and the Constitution should promote.

MR. MORRISSEY: Well, it just occurred to me that gambling was not prohibited in the Ten Commandments, which I would take to be the fundamental moral code.

DR. FRIEDRICH: It is not prohibited in the Ten Commandments and I don't know that—

MR. MORRISSEY: I am not arguing with you, Doctor.

DR. FRIEDRICH: —I don't know that it is prohibited anywhere specifically in the Scripture. But the application of the Scripture to life in its highest terms as we now conceive it, certainly, in my opinion, would place that as an evil.

CHAIRMAN: Any further questions? . . . Thank you very much, Doctor.

The next speaker listed is Mr. John Bebout. Professor Bebout, will you please state your name for the record and the organizations that you represent?

MR. JOHN BEBOUT: My name is John Bebout, speaking today for the New Jersey Committee for Constitutional Revision. Just to remind you of the organizations that committee represents, it includes the New Jersey State Federation of Labor, the New Jersey State Federation of Women's Clubs, the New Jersey Association of Real Estate Boards, the New Jersey Taxpayers' Association, National Council of Jewish Women, Consumers' League of New Jersey, American Association of University Women, the New Jersey State Federation of Colored Women's Clubs, New Jersey League of Women Voters, Congress of Industrial Organizations and the New Jersey League of Women Shoppers.

Now, I am going to speak on a number of clauses upon which the committee has recommendations. I understand these recommendations are before this Committee. I am going to concentrate on two or three because State Treasurer Hendrickson, I believe, is going to present the program in general next week and will develop more fully the reasoning behind some of the recommendations. I am going to stress particularly two or three items that I understand he did not care to discuss here himself. With your permission, I should like to start with our proposals concerning home rule which Mr. Evans was discussing with you earlier this morning on his own account. I believe Mr. Evans laid down what might be described as the fundamental need for some constitutional provision to make home rule more available to counties, municipalities and other civil divisions in the State.

The recommendations of the New Jersey Committee for Constitutional Revision go somewhat farther than I understand Mr. Evans' recommendations have gone so far. As we see it, it is important to do what Mr. Evans wanted done; that is, to reverse the rule of strict construction by which municipal powers are interpreted today, so that it will be understood that municipalities and counties have powers unless they are quite clearly prohibited or quite clearly denied by the Constitution and state law. But we also believe that it is important the Constitution should make it possible for citizens of counties and local units to frame their own charters of government. There are some 17 states which now have effective home rule provisions in their state constitutions, and they include a number of states which should be recognized as having made in recent years the most progress in municipal government. Among those states are Michigan, Wisconsin, Ohio, New York, California, Missouri.

I am going to leave with you a sample draft which incorporates

our recommendations.¹ This draft itself is not the product of the committee as a whole but is a product of the Research Committee of the Committee for Constitutional Revision, of which I am chairman. I want to make clear that the committee itself has endorsed principles, but we are making these drafts available to you for whatever help they may give and by way of demonstrating a specific way, but by no means necessarily the only satisfactory way, in which the principles can be brought into practical constitutional language.

This draft starts out with a general statement that:

“Provision shall be made by general law for the incorporation and powers of counties, cities and other civil divisions; and for procedures, which may be optional, for the alteration of boundaries, the consolidation, the cooperation, the interchange of powers and the dissolution of such corporations.

Provision shall also be made by general law for optional plans of organization and government for counties, cities and other civil divisions.”

Now, these statements, these phrases, are taken largely from the Model State Constitution prepared by the Committee on State Government of the National Municipal League, with which I happen to be associated.

Then the second section deals specifically with the matter of home rule charters, and guarantees to the people of any county, city, or other civil division the right to frame such charters. It provides that the Legislature shall provide optional procedures for actually carrying out this right, but it also provides that the governing body of any local unit or the people by petition may set up a procedure for the election of a charter commission and the framing and adoption of a local charter.

We have another provision which may or may not properly come before your Committee, but it is so intimately connected with this that I think it ought to be called to your attention. It was discussed this morning, I believe, by indirection at least, and that is the provision to limit mandatory legislation affecting counties, municipalities and other civil divisions. I am not quite clear from what I have been told whether you are taking that matter up or whether that should be before the Committee on Taxation and Finance.

CHAIRMAN: While I would think that it is under the general heading of limitation on legislative power, it might properly be considered by this Committee. If later on we find that it isn't, that some other Committee has it, why no harm will be done except a little time will have been wasted. We would be very glad to hear your thoughts on it.

MR. BEBOUT: All right. Now, incidentally, the program that I have been presenting was adopted by the New Jersey Committee

¹The recommendations of the New Jersey Committee for Constitutional Revision appear in the Appendix to these Committee Proceedings, as does the more extended report of its Research and Drafting Committee, of which Mr. Bebout was chairman.

for Constitutional Revision in 1944. So also was its plank on the subject of mandatory law. Since this draft is a slight modification of one which the committee did specifically approve in 1944—it is short—I think I will read it because I believe it is about as quick a way of explaining the object as I can give.

“The Legislature shall not hereafter enact any law prescribing or determining specific numbers, emoluments, or tenure or pension rights of particular classes of officers or employees of any county, municipality or other civil division of the State, whose salaries, pensions, and other expenses arising from their employment are paid from funds no substantial or commensurate part of which is furnished by the State; provided that this shall not prohibit prescription by state law of non-pecuniary obligations or standards of service or performance, or prohibit the application of any general act for optional plans of organization for local governments or for establishing a comprehensive civil service or pension system affecting all employees of a local government.”

I think those of you who have been familiar with the grist in the legislative mill over the years would be perfectly well aware of the particular type of legislation that this is aimed at, and of the necessity for hedging the prohibition as we have in order to make it clear that it does not cripple the Legislature in its perfectly legitimate and necessary functions of setting proper standards of service and performance. There might be some question as to whether mandatory legislation should be prohibited in all cases in which the municipality makes any contribution to the cost. I believe some drafts have been prepared which would prohibit any mandatory legislation if the municipality pays any part of it. Whether that should be the basis, or whether it should be the basis suggested here—that is, it should be prohibited unless the State makes some reasonable or substantial contribution to the cost—is something that your Committee would want to consider. I think the New Jersey Committee for Constitutional Revision has never taken a definite position on that rather technical but important point.

I have a statement here on the need for home rule provisions in the New Jersey Constitution and on this mandatory law provision which I shall file with you. Perhaps before moving on to any other parts of the committee's program, you would like to question me on these items.

CHAIRMAN: Would any member of the Committee like to ask Professor Bebout any questions on the home rule or mandatory legislation question of his address? Senator Lewis.

MR. LEWIS: Professor Bebout, you mention that 17 states have adopted what you are now proposing. Has that been adopted by these states over a period of years or just recently?

MR. BEBOUT: Well, the first provision of this sort was put in the Missouri Constitution, as I recall it, in 1875, and they have been adopted from time to time since in different state constitutions.

MR. LEWIS: In other words, there is a time experience table, so to speak.

MR. BEBOUT: Yes, there is a long background of experience back of this.

CHAIRMAN: Any further questions on this subdivision of Professor Bebout's remarks?

Will you proceed to your next discussion, Professor Bebout?

MR. BEBOUT: One of the planks in our platform calls for the prohibition of legislation under suspension of rules unless the Governor certifies to an emergency. Since I believe the League of Women Voters which is associated with this committee has a definite draft on this section, I merely record that this is regarded as an important item in the program, designed to prevent what has become well known as "legislative lightning."

Then another plank in our platform, which I should think does not belong in this Committee, has to do with the investigatory power. I believe that was slipped in the section on public officers in 1944.

CHAIRMAN: Investigatory power by . . . ?

MR. BEBOUT: By the Legislature. At any rate, we have a draft here which combines and undertakes to deal at the same time with the investigatory power by the Legislature and the Governor. I presented it last week to the Executive Committee, so that at least it is on the record.

CHAIRMAN: May I interrupt you there, Professor? Do you consider that a constitutional provision is necessary in order to give the Legislature investigatory powers, or do you not think the Legislature has the inherent power to conduct investigations?

MR. BEBOUT: I think there is no question that the Legislature has inherent investigatory power. The only question is as to the extent and the effectiveness of it as it has been interpreted and somewhat limited by judicial interpretation.

CHAIRMAN: The only limitation is that the Legislature should find that the purpose of the investigation is to aid the Legislature in framing laws. Isn't that so?

MR. BEBOUT: It is my impression from reading the cases that they confine it more strictly than that; that if the courts are inclined to feel that the investigation might be appropriate to the grand jury and the courts, they say it cannot be within the scope of the legislative power. It seems to me important to provide that the Legislature's power of investigation is as broad as it conceivably needs to be to give the Legislature the background of information that it might need for any legislative action. So long as the persons under questioning are guaranteed immunity from prosecution for anything they may say, I can see no objection to investigations

which cover areas which might conceivably also be the basis for criminal prosecution. That is, the same set of circumstances, the same set of facts and conditions, may quite properly be the object of legislative inquiry for the purpose of changes in the laws or for the purpose of ascertaining how effectively public funds and interests are guarded. They may also be the object of inquiry by the courts.

CHAIRMAN: Any further questions? . . . Will you proceed, Professor?

MR. BEBOUT: Another item in our program calls for a slight change in the wording of the clause concerning the election of members of the General Assembly, which has been interpreted in the past to prohibit the breaking up of counties for the purpose of election by Assembly districts and which also would presumably prevent the election of Assemblymen by what is known as proportional representation. There are several different ways in which the wording could be changed to free the Legislature at some future date to choose one or the other or possibly some different method of electing Assemblymen within the counties.

CHAIRMAN: In that connection, Professor, have you given any thought to the restrictions of the act of the Legislature which sets up this Convention?

MR. BEBOUT: Yes, I have.

CHAIRMAN: Is it your opinion that the restrictions would interfere with the Convention's considering the election of Assemblymen by Assembly districts rather than by the county at large?

MR. BEBOUT: I don't think so. I admit there is room for argument there, but I think the language is sufficiently vague and open to argument that the Convention is perfectly justified in putting its own interpretation on it.

CHAIRMAN: I want to state for the record that a proposal, I think it is Proposal No. 10, has been introduced in the Convention by a delegate calling for a constitutional provision which would provide for the election of Assemblymen by Assembly districts rather than at large. That proposal was referred to this Committee, and this Committee has felt that there is so much doubt as to whether or not the language of the act setting up the Convention would permit us to consider that proposal that we have referred the question to the Attorney-General for his opinion.

MR. BEBOUT: I want to make it clear that the New Jersey Committee for Constitutional Revision is not advocating Assembly districts or proportional representation. It is merely taking the position that it is unfortunate and unsound to have language in the Constitution which does not permit the Legislature any choice in the future in determining how Assemblymen should be elected.

CHAIRMAN: Don't you think that the question of whether or not the Assemblymen should be elected at large throughout the county or by Assembly districts is one which should be definitely settled in the Constitution itself rather than be left to the Legislature?

MR. BEBOUT: Not necessarily. I think it would be perfectly legitimate to settle it in the Constitution, but I also think it can properly be left to the Legislature. Unless you are perfectly sure that you have what is likely to be, for a long time to come, the ideal method fixed in the Constitution, it seems to me to be safer to leave it open. I think that it is a pretty good rule in general.

CHAIRMAN: Judge Lance has a question, I think.

MR. LANCE: Professor, has any state ever allowed its Legislature the discretion of switching from the county-at-large basis to either (1) proportional representation, or (2) election by Assembly districts?

MR. BEBOUT: No state has ever tried proportional representation as a method of electing members of the Legislature. I believe, however—unfortunately I can't be sure about this; I will have to check it and I will be glad to let the Committee know later—I believe, however, that there are a number of states in which the legislature actually does have the choice, that the language of the constitution is sufficiently general to permit of some variety; but I will have to check on that.

CHAIRMAN: Any further questions? . . . Will you proceed, Professor Bebout?

MR. BEBOUT: Just by way of illustration, here is one form which we think would accomplish this purpose, although there are any number of ways in which it could be stated:

"The members of the General Assembly shall be apportioned among the counties as nearly as may be according to their inhabitants and shall be elected for two-year terms in such manner as the Legislature may prescribe."

The words which have been interpreted to prevent either Assembly districts or proportional representation election are the words "elected by the legal voters of the county." In my opinion the interpretation put upon those words in *State v Wrightson*, the case in which the matter was determined, was unnecessarily narrow. I don't think those words necessarily mean what the court held them to mean. And it is of course conceivable that some future court might read them differently, but we can't expect that.

MR. DOMINIC A. CAVICCHIA: Well, aren't we bound by that decision?

MR. BEBOUT: Isn't who bound by that decision?

MR. CAVICCHIA: Well, that is the court's interpretation of the present provision.

MR. BEBOUT: Yes, but since courts have been known to change their minds more than once, including the Supreme Court of the United States, if the Legislature felt strongly enough about it some time to try the courts out, I see no impropriety in it.

MR. CAVICCHIA: Would you leave so important a thing to the Legislature, as you indicate in the proposal, so that the Legislature from year to year could change the method of electing Assemblymen?

MR. BEBOUT: Yes, that is our proposal.

MR. CAVICCHIA: You mean to say that the thing is of so little import that you would leave the people to the mercy of the Legislature to enact a method one year and then gerrymander it some way the next year, and so on, *ad infinitum*?

CHAIRMAN: Mr. Cavicchia is speaking as a ex-member of the Legislature.

(Laughter)

MR. BEBOUT: Well, I was going to say that I think maybe I have a little more faith in the Legislature.

CHAIRMAN: Any further questions? . . . Judge Lance.

MR. LANCE: I think what Mr. Cavicchia means is that with a sharp pencil and a good knife two Republican Assemblymen might be sent up from Hudson County.

(Laughter)

CHAIRMAN: And four Democrats from Essex.

(Laughter)

Will you proceed, Professor?

MR. BEBOUT: Another proposal of the committee, which I think Mr. Hendrickson will probably speak on more in detail, is one to permit the increase in legislative salaries.

CHAIRMAN: Before you get to that, Professor, there is one question I would like to ask. I got from your remarks on the last subject matter you discussed that just in an incidental way your organizations favor a two-year term for Assemblymen rather than the one-year term as at present. Is that so?

MR. BEBOUT: That's right.

CHAIRMAN: What have you got to say about the terms of the Senators?

MR. BEBOUT: A four-year term for Senators. And I believe Mr. Hendrickson will discuss this more in detail, which is why I didn't go into that.

CHAIRMAN: All right.

MR. BEBOUT: There is just one thing that I should like to say about the subject of the legislative council. This is more or less a personal observation. I think it is important not to crystallize the

form of the council too definitely in the Constitution. That is, leave it up to the Legislature to determine its size and the exact method of composing it in the light of experience.

MR. LEONARD: Well, Professor, on that question, do you feel that it is necessary to make any reference in the Constitution to the council?

MR. BEBOUT: No, I don't think it is necessary, but I think it is desirable because there is plenty of experience now with over a dozen legislative councils in operation—two or three were started just during the last year—to indicate that a legislative council is unquestionably of great help to the Legislature. Admittedly, a general provision saying that there shall be a legislative council elected in such manner as the Legislature may determine is hortatory; it is mandatory in form but, of course, it will mean much, little, or nothing depending upon the Legislature's disposition. However, the fact that it is in the Constitution unquestionably would have moral effect and would be a statement of public policy on the part of the people of the State.

MR. LEONARD: In the final analysis, then, you would agree with me that the entire subject matter of the council is one that would be treated by the Legislature exclusively? I mean that even though it was in the Constitution, they could have it or not as they desired.

MR. BEBOUT: That's right. But I doubt very much if the Legislature would abstain from having it if the Constitution says they are supposed to have it.

MR. LEONARD: Well, they could have one in form which would have little or no duties to perform.

MR. BEBOUT: That's right.

MR. CAVICCHIA: Professor Bebout, what to your knowledge has the experience been in legislative councils in those states in which legislatures meet annually? Doesn't the legislative council usually prevail in those states that have biennial sessions?

MR. BEBOUT: Yes, because those states have biennial sessions, but I don't see any important difference on that score. I suppose that it can be argued that it is a little more important to have a legislative council when the Legislature is meeting only every other year for regular purposes. But the necessity for having experts in research and preparation back of legislative proposals on important matters is just as great whether the Legislature meets every year or continuously or only every other year. The Model State Constitution that I referred to some time ago provides, as a matter of fact, for continuous legislative sessions or at least for quarterly legislative sessions, yet it also provides for a legislative council, and the people who drew that up regard the legislative council as of the utmost importance.

MR. LANCE: Professor Bebout, have you any recommendation on compensation of legislators? Do you recommend that that be fixed in the Constitution or as provided by statute?

MR. LEONARD: May we stay with the subject of the council a moment?

MR. LANCE: Well, this is hooked up.

MR. LEONARD: All right, go ahead. I wanted to stay with the council.

MR. BEBOUT: The committee recommends that no specific amount be fixed in the Constitution, as I recall it, but that the Legislature be free to set an amount which would not go into effect during the term of the Legislature which raised the compensation. I should think, and this is probably what you had in mind, that legislators who were for the time being members of the legislative council should obviously have more than other members of the Legislature. But that would not be put in the Constitution, according to our proposal.

MR. LANCE: In the event that the delegates did decide to fix the compensation of legislators at a fixed amount, then do you think that as far as we should go on this matter of legislative council, is to provide that if and when the Legislature in its discretion does form a council, that the legislator members shall have an increased compensation?

MR. BEBOUT: Well, I should think you would go at least that far. I would go farther and say that there should be a legislative council, and I would also say that the Legislature can provide increased compensation for members of the legislative council.

MR. LANCE: But your recommendation is that if the Convention doesn't give a council a constitutional status, that at least we should make provision on compensation if the compensation is fixed?

MR. BEBOUT: I certainly should. Yes.

CHAIRMAN: Professor, I'd be interested in knowing your conception of the makeup and the functions of the legislative council.

MR. BEBOUT: Well, the pattern has become fairly well set as far as makeup is concerned. Originally it was thought that the legislative council should perhaps include the Governor and one or two executive officers and representative members of the Legislature; but I think most informed opinion now is to the effect that it should consist only of members of the Legislature, selected by the Legislature and preferably in such fashion as to assure that they would be representative of both houses—that is, representative as a whole of each house. The council should, of course, then have adequate appropriation so that it can have a full-time professional staff. The staff would then be set to work by the council, preparing

information and, if the council thinks necessary, drafts for legislation to come up at the next session.

CHAIRMAN: Would you feel that this council could in any way restrict the functions of the Legislature itself?

MR. BEBOUT: No. That is, it's entirely a creature of the Legislature.

CHAIRMAN: And purely advisory.

MR. BEBOUT: That's right.

MR. LEONARD: You have mentioned in passing that the council would draw up legislation to present to the next session of the Legislature. You mean by that, Professor, that the council would go into the policy of legislation? Where would the council get the thought of their idea behind the legislation? In other words, would they create their own subject matter for legislation or would they be confined to the subject matters that the overall members of the Legislature introduced or presented?

MR. BEBOUT: That would depend, of course, on the rules and customs that were developed. Different customs have developed in different states with legislative councils. In a good many cases they would undoubtedly prepare material and, if necessary, drafts on specific matters which the Legislature, at its last session, indicated it wanted to consider or might want to consider at the next session. However, if the council itself is fairly representative of the Legislature as a whole, it should be in a position during the months between sessions to recognize the fact that here is a problem which probably will have to be considered by the Legislature, and to order its research staff to get up the necessary information and then, if it sees fit, to order the staff to prepare a tentative draft of the bill. The usefulness of the council and the confidence the Legislature will have in it will, of course, depend on its wisdom and upon its representatives. That's why, one reason why, I think it's important not to crystalize in the Constitution a particular method of selecting the council which at some future date might not seem to the Legislature itself to produce a council that was sufficiently representative of it and responsive to its opinion.

(Recess was declared for five minutes)

CHAIRMAN: The hearing will be resumed. Will you proceed, Professor Bebout, please?

MR. BEBOUT: Well, as far as I can see from my notes here, I've covered about everything that I thought it was important for me to cover today in view, as I say, of the fact that Mr. Hendrickson is going to present other parts of the program.

MRS. OLIVE C. SANFORD: Every time I have a question to ask one of the men asks it. I was going to ask him about this: Where

would they get the suggestions for the legislation?—but I think your answer to that was good.

MR. BEBOUT: As I was saying here off the record, one purpose of the legislative council is to have a brain, so to speak, or thinking machine, which represents the Legislature because it is a cross-section of the Legislature always in being, ready to anticipate problems which may not have been evident at the last session but which, if they become evident, are going to be important matters for consideration at the next session. Now, certainly it should be possible therefore for the legislative council, as the representative of the Legislature, to direct research tasks and investigate any question which is new in the sense it was not anticipated at the last session but which is certainly going to be an issue.

I think that if there are no further questions about the committee's recommendations I would like to make a suggestion on a subject which the committee itself has never taken a position on. In one of the monographs that was distributed by Mr. Goldmann was a set of extracts from a thesis by a former colleague of mine on the provisions of the Constitution concerning the titles of acts and other procedural limitations on the Legislature.¹ I hope you will go over that rather carefully because he demonstrates, I think quite conclusively, that most of those limitations, particularly the one concerning titles of acts, have not accomplished the purposes for which they were intended. As a matter of fact, they have been productive of a lot of perfectly unnecessary and worthless litigation which has only introduced confusion into the minds of the Legislature and the public concerning the state of the law. I would suggest, therefore, and this is a personal suggestion and not one coming from the committee, because the committee has never considered it, that you consider either eliminating certain of those provisions altogether—and I might suggest that the elimination of those provisions would not be so serious in its effect as it might otherwise be if you do have a legislative council and adequate assistance in the checking and drafting of bills, including the titles of bills—or at least provide that no act can be questioned on the basis of alleged inadequacy of title after more than a year has elapsed, let us say. I would suggest further that no such test should be permitted by collateral attack. We have a law adopted in 1873 which permits direct attack on bills which allegedly do not get a majority of the vote. There is no reason why that same procedure should not be made available for a reasonable period of time for testing the validity of acts—a question involving deceptive title, or something of the sort.

CHAIRMAN: In other words, you would in effect recommend

¹ See monograph by Thornton Sinclair, "Procedural Limitations on the Legislative Process in the New Jersey Constitution," in Volume II.

a provision which would allow for a declaratory judgment on the act without any property right being involved?

MR. BEBOUT: That's right.

CHAIRMAN: And that within a limited time after the passage of the act?

MR. BEBOUT: Yes.

CHAIRMAN: Are there any questions?

MRS. MYRA C. HACKER: I would like to ask you a few questions about some of your previous statements. Did I understand you correctly, that you wanted unlimited sessions of the Legislature, or limited, or an annual or biennial? I didn't quite get that straight.

MR. BEBOUT: As far as I know, the New Jersey Committee for Constitutional Revision has never taken a definite position on the question of sessions. It endorsed the Hendrickson report in general in 1942 providing, as I recall it, for biennial sessions. It also endorsed the 1944 proposed revision in general which had annual sessions. So I take it that that is a question upon which the committee does not have a very determined opinion.

CHAIRMAN: It blows hot and cold.

MR. BEBOUT: However, since you have asked the question, I would like to give my own view on it, because I do feel rather strongly on it.

I am very much opposed to limiting legislative sessions, and I think you will find that that has come to be the generally accepted position of most students of the legislative process. The theory back of limited sessions, it seems to me, is the theory that legislatures are not, as some people said gambling was, inherently evil, but at least they are highly questionable and the less you have of them the better. The result, of course, is not actually to cure any evils that may exist but to force the legislature on certain occasions to do a less thorough job of preparation and consideration than it might otherwise do.

MRS. HACKER: I have been identified rather closely for years with one of the organizations which you mentioned, and to my knowledge we have never taken any stand, so I just wanted to clear that point up.

Have you ever given any consideration to limitation of the scope of legislation which may be enacted by the Legislature?

MR. BEBOUT: I am not sure that I understand the question.

MRS. HACKER: Well, every year we have a certain number of things—every conceivable subject is introduced. Now, has your committee given any thought to that matter? You see, from the average layman's point of view, a great many of us feel we have too much legislation; in fact, we are overwhelmed with it. And I would like to go back to your legislative council again after this is over.

MR. BEBOUT: Of course, there are certain specific items covered by constitutional limitations on the power of the Legislature—things which the Legislature cannot do now. We are not proposing any considerable number of additional constitutional limitations. The most important constitutional limitation that we are proposing is this one on mandatory legislation that I read. We also point out that if we had constitutional home rule implemented by wise general legislation, it should be unnecessary for the Legislature to enact as many specific bills concerning county and local government every year as it now does. We agree that there is an unnecessary volume and variety of legislation.

MRS. HACKER: In comparison to England, it is rather startling.

MR. BEBOUT: Yes. We think there are various lines of attack that would have to be taken on that problem.

MRS. HACKER: Have you any specific recommendation?

MR. BEBOUT: Well, one is to give local units greater breadth of discretion, and that would automatically, as I say, reduce the need for legislation which is, if not special in form, at least special in fact. If you followed the recommendation that Mr. Evans made this morning and which is incorporated in our home rule provision, when powers are granted by the Constitution or by law to municipalities they shall be interpreted broadly rather than narrowly, interpreted in favor of the municipality rather than against it. That again reduces the necessity for municipal governing bodies coming to the Legislature and asking for specific authorization to do something which they had supposed they might do but which, according to the narrow interpretation of the law, they found they couldn't do.

Now, another line of attack on the problem is to provide methods, including this legislative council, for injecting a greater amount of information and deliberation into the legislative process.

MRS. HACKER: Well, that is what I would like to consider. You mention that you are going to have research staffs in connection with your legislative council. That is proposed, I believe. Aren't you going to lose some of the tremendous amount of ability and vitality and dynamic strength that you have in the Legislature itself if you resign so much of the thinking to research staffs to write these ideas into legislation? For instance, in the Legislature we have in Senator O'Mara an authority on constitutional law. We have many other people. Aren't you going to lose some of the cumulative, constructive thinking that you get out of a whole group and that you can't get from research people? Aren't you going to crimp the style and the tremendous dynamic energies of legislators?

MR. BEBOUT: I can't imagine Senator O'Mara allowing the

fact that a legislative council exists induce him to "hide his light under a bushel."

CHAIRMAN: Or Assemblyman Tumulty.

(Laughter)

MRS. HACKER: Of course, that might be true, but I am speaking of the average person in the Legislature. The cumulative effect of their ability is very great. Just where can you get a research staff that would in any way be comparable to the type of abilities they represent?

MR. BEBOUT: Well, in the first place, of course, the research staff is selected strictly on the basis of the technical or professional competence of its members—selected on an entirely different basis from the members of the Legislature themselves, who are chosen primarily because they represent the interests and points of view and attitudes entertained by the public on public questions. Many members of the Legislature who are very well qualified to represent the people from that point of view would be the last people to claim that they were able to draft a good bill on each and every kind of subject that the Legislature deals with, or for that matter personally engage in the necessary research to get the facts which they need in order first, to make up their minds, and second, to present their points of view effectively.

It has been my observation that the more information a member of the Legislature has available, the more helpful, the more effective, he is going to be. If you don't feel adequately informed and don't have the time, as members of the Legislature certainly don't have, personally to dig up all the information you need on every subject, you are much more likely to keep still, at least if you are wise, and your discussion is much less likely to be helpful than if you have the services of a technical staff at your disposal.

Since you raised the question of limitation of sessions, there is a connection there which I think you also have in the back of your mind—that the limitation of legislative sessions tends again to stifle deliberation and to force members of the Legislature to arrive at snap judgments which they might much prefer to postpone until they have a little more time to get more information, but feeling the urgency of some action before the end of the session, they take action hoping that it won't be too wide of the mark.

CHAIRMAN: Any further questions? . . . Thank you very much, Professor Bebout. We are very much indebted to you.

Judge Lance has a question.

MR. LANCE: This is a very minor question. Our present Constitution provides that revenue measures may originate only in the lower House, and this has a long constitutional history back over eight or nine hundred years. Do you think it would be worth

while extending that power to the Senate in order to obviate the guessing of whether a particular measure is a revenue measure or not.

MR. BEBOUT: I certainly should; that is some language that could be dropped out of the Constitution to advantage. In other words, you don't need to extend it to the Senate—you just eliminate the present provision that revenue measures must originate in the lower House. Incidentally, that is one of the minor matters upon which this monograph by Dr. Sinclair that I mentioned throws some light.

MR. LANCE: Now, another minor point. You suggested that the Constitution eliminate any reference whatsoever to titles.

MR. BEBOUT: I suggested that as a possibility, or if you thought that was going too far, limiting the time and the method for judicial review.

MR. LANCE: But you would keep the prohibition which is in the same clause at present, that each act have but a single object. Is that correct?

MR. BEBOUT: Not necessarily. As a matter of fact, I think the two go together. My own preference would be to keep the provision in, but limit the time and the method for testing. I think it is a good provision, but I think it is a very bad provision when it permits litigation, arising sometimes many years after the act has been on the books and relied on by a great many people, to determine whether or not that act was good in the first place.

CHAIRMAN: Any further questions?

MR. JORGENSEN: Professor, as a student of constitutional law, I would like to submit to you a question not apropos to your remarks today, if you would care to answer it.

MR. BEBOUT: Well, I will try to answer it.

MR. JORGENSEN: I would like to know whether or not in your opinion—you have heard the discussion here this afternoon on this gambling feature—whether or not you feel that any reference to gambling has any place in the fundamental law of our State?

MR. BEBOUT: My answer to that question is strictly a personal one, because, like quite a lot of other questions, this is one which the New Jersey Committee for Constitutional Revision has taken no position on. I am sure we have in the committee just as wide a variety of opinions on that question as you can find in any other similar group. My own view is that it doesn't belong in the Constitution any more than Prohibition belongs in the Constitution. It seems to me that the present provision which distinguishes between one form of gambling and another is, as has been suggested, hypocritical and that in any event the whole thing is surplus baggage—it is a subject upon which the Legislature has in-

herent power to legislate to the extent of full prohibition or regulation in the degree that it sees fit. It seems to me that that is where it ought to rest. But that is strictly my personal opinion.

CHAIRMAN: Any further questions? . . . Thank you very much, Professor.

The next speaker listed is Mrs. Merrill. Mrs. Merrill, will you please for the record list your name and the organizations which you represent?

MRS. J. C. MERRILL: I am Mrs. J. C. Merrill and I am speaking for the Council of the New Jersey League of Women Voters. I have a statement here which I would like to read with your permission (*reading*):

"Senator O'Mara and members of the Committee:

The Council of the League of Women Voters in submitting proposals to your Committee wishes to point out that no attempt is here made to cover all of the details of legislative procedure which must be included in a Constitution. The proposals discussed are those upon which the League, by virtue of study and experience, feels prepared to make recommendations."

We think you might be interested to know that the Council is made up of the State Board plus the president of each local League, of which there are 43, I believe. A new one came in; it may be 44 as of today. (*Reading*):

"We are aware of your very thorough committee discussion and realize that we cannot contribute much which will be new to you. Our explanations are therefore given principally to call your attention to our written proposals and to let you know what a group of citizens is thinking.

To introduce the subject, let us quote from a recent publication of the Council of State Governments called *Our State Legislatures*: "The legislative task is essentially the determination of broad policies in a clear and decisive way; authorization of organization, personnel, powers and finances adequate to administer its policies and the review of the effectiveness of those policies and of their administration."

Sessions of the Legislature

It is recommended that the Legislature meet at least annually, and that there be no limit set to the length of the session. Our present Constitution is silent regarding this. The 1942 draft provided for 90-day *biennial* sessions, but in the 1944 draft the 90-day sessions were made *annual*. The Council of State Governments in the report mentioned above says . . ."

By the way, I think I should explain that this report is a fairly recent one and it was written by a number of representatives of a number of different state legislatures. And they say in this report (*reading*):

"Restrictions upon the length of regular sessions should be removed. The Model State Constitution calls for a continuous session. Most political scientists seem to agree with the above point of view. Several are cited in Vol. VII of New York State Constitutional Convention Reports, Chapter 12. Also see an article on "State Legislative Reorganization," by John A. Perkins, professor at University of Michigan, in *American Political Science Review*, June 1946. As of 1946, 22 states have no restrictions on the length of their legislative sessions."

I believe it is also true that a number of states that have biennial sessions have special sessions in the intervening year. (*Reading*):

"The Oklahoma and Florida Leagues of Women Voters report to us that they are seeking relaxation of limitations on legislative sessions as among the most important changes needed in the constitutional revisions they hope to obtain. Oklahoma lists biennial 60-day sessions as one of three bad features of their constitution. Florida says they need 'a much longer session, possibly continuous or nearly so.'

In proposing annual unlimited sessions we call attention to the fact that in practice our Legislature has limited itself anyway. In 1940, 1941 and 1942 it continued in session all year because the Legislature, of a different party from the Governor, feared interim appointments. This fear can be avoided if the Senate remains in continuous session, technically. More frequent meetings would enable an earlier adjournment, but even after three months there have been outstanding problems. This year when adjournment was taken it was already known that two special sessions would have to be called to deal with unfinished business.

The great need of our Legislature is for more deliberation, more careful committee consideration. This year many bills have had to be recalled because of hasty action. Every year there is a last-minute jam of legislation which is either passed over hastily or lost in the shuffle. Obviously we need more time, not less, for legislation. To impose a limit is artificial since the need for legislation does not arise all at once, but may occur at any time and pressure becomes more intense if it is allowed to pile up.

The principal argument for limitation is based on the contention that we don't want many laws, that it keeps things upset if the Legislature is constantly in session. But it is at least equally bad to need a new law or a change in an old one and not be able to get it. Limitations are primarily motivated by fear of legislation. This is a cogent argument from the point of view of interests which wish to avoid regulations in the public interest. From the people's point of view their elected representatives should at all times be able to pass laws for their protection or to extend their interests.

In general it is better not to put any more limitations in the Constitution than necessary. It needs to be flexible, and this will encourage more legislative responsibility.

Composition of the Legislature

The four-year term which we propose for Senators has been adopted in 31 states. This longer term saves valuable time and expense for candidates and voters, adds dignity to the office, and brings about a more careful consideration of candidates and issues.

A two-year term for Assemblymen is recommended. Such a term is now in force in 43 states. The present constitutional provision for a one-year term involves Assemblymen in two elections each year, thus discouraging careful attention to legislative duties. To quote again from *Our State Legislatures*: 'Changing conditions of the times require changing emphasis in governmental organization no less than in public policy. In the early years of the republic, short terms and frequent elections were held necessary to insure responsiveness of legislators to the wishes of the electorate. Frequent elections are necessary in any representative government, but the complex and multitudinous problems of the present day require a much greater degree of practical familiarity with governmental procedures and experienced insight into public questions than was necessary a century ago. The problem is to reconcile the representative character of the legislature with a growing need for more experienced legislators and greater consistency in long-range legislative policy.'

We also recommend provision for filling vacancies at the next general election, since lengthened terms might mean counties otherwise being without representation.

Elsewhere in our proposals (p. 18) we call for election of the Governor and members of the Legislature in odd-numbered years so that state elections will not fall at the same time as national elections. More careful consideration can then be given by the voter to state problems, and the ballots will be uniformly shorter."

Then, I would like to read from our proposals.¹ I might say that in some instances in this statement I have copied from the proposal and in others I have enlarged upon it, so that the statement needs to be used with the proposal. Among our proposals there is this change of wording in the election provision: "Members of General Assembly shall be elected by the legal voters in such manner as may be prescribed by law." This is the thing that Professor Bebout mentioned, and we recommend this exact wording. It's been carefully phrased to make constitutionally possible legislation establishing single member districts and the proportional representation method of voting in counties having more than one Assemblyman. By the way, the *Newark News* said "no more than one Assemblyman." The "no" has to come out, of course. In case this should prove desirable at some future date, the courts have ruled that the phrase "voters of the counties" in the present Constitution prohibits the setting up of single-member districts.

Now, as to salaries (*reading*):

"The 1942 draft Constitution provided for a \$1,500 annual salary, the 1944 draft for \$2,000. The Model Constitution calls for the annual salary to be fixed by law. We believe the last is the best, with restrictions against legislators increasing their own salaries. If the Convention decides to fix a salary in the Constitution, we feel it should be high enough to permit competent persons to serve in the Legislature without financial sacrifice."

Dual Office-Holding—we have experimented with several different statements here and come up with three, finally. (*Reading*):

"Three statements are necessary to cover all the aspects of this problem. It is considered desirable that first, persons already holding federal or other state office should be ineligible to sit in the Legislature; second, that persons in the Legislature should forfeit their seats upon acceptance of other public office; and third, that the Legislature should be discouraged from creating jobs expressly for any of its members.

Constitutional prohibitions on dual office-holding have existed since 1776. Prohibitions similar to the above are contained in the present Constitution, and were included in the 1942 and 1944 drafts. Dual office-holding is contrary to the theory of separation of powers; it prevents independent judgment by the lawmaker; it may cause the slighting of one of the offices held; and it may be a form of coercion or bribery.

Legislation

The present Constitution, the 1942 and 1944 drafts, all provide regarding the passage of bills that it shall 'be read three times in each house.'

There are three points here, any or all of which may be included in the paragraph on suspension of rules (the League proposed all three): first, three readings on separate days; second, that bills be printed in final form, on the desks of the members for three days before final passage; and third, in an emergency, the Governor may certify that an emergency exists and the Legislature vote to consider by a two-thirds vote.

If the reading of a bill by its title is permissible, the Constitution should so state. Even though the emergency procedure can be abused by the Governor, it is probably safer to have it. Point 2—"

¹ These proposals, excerpted from the mimeographed "Constitutional Changes Recommended by the League of Women Voters of New Jersey," appear in the Appendix to these Committee Proceedings.

that is the one about the bills being printed in final form three days before passage—(reading):

“seems to us to be the most important. Development of a proper committee system by the Legislature would tend to lessen the need for the three readings, but at present they should be retained.

Committees

Many state legislatures are becoming concerned with the ‘efficiency of the methods by which they pass laws.’ *Our State Legislatures* says: ‘The basic work of the legislature is done in committee. Without an effective committee system, therefore, the legislature cannot function effectively.’

Among the procedures considered by the League is the one written into this proposal, namely, that a committee journal be kept as a public record . . .

Powers of the Legislature

Limitation of appointments. The Model Constitution has an Auditor elected by the Legislature. In the 1942 and 1944 New Jersey draft constitutions the Treasurer and Comptroller were also included.

The League feels that appointment of executive officers by the Legislature invites interference in administrative details, tends to corrupt by offering opportunities for legislative patronage, reduces the dignity of the Legislature and impedes its deliberative processes.

On the other hand, the Auditor is a servant of the Legislature and his function is to act as a check on the handling of state funds by the Executive Branch. He should therefore be appointed by the Legislature, and his position should be constitutionally protected.

Investigations

This proposal covers only the punishment of persons who refuse to attend legislative hearings as witnesses. Elsewhere (pages 9 and 17 in our proposal) we outline the Governor’s power of investigation and a waiver of immunity clause regarding public officers. The present Constitution says nothing about this right. The 1942 and 1944 drafts allow investigations of any and all phases of state and local government. The Model Constitution gives the Legislature power to compel testimony of witnesses. The power to compel testimony should be incorporated in the Legislative Article as it is in many other states. It should include a reference to the purpose for which investigation by the Legislature is justifiable, namely, as a basis for legislation.

Dr. Joseph P. Harris, writing in the *National Municipal Review* for March 1947, page 143 says: ‘The need for strengthening state legislatures today is widely recognized. Vigorous, vital, effective legislative bodies are essential to democratic government, to efficiency and economy of administration, and to the enactment of legislation on social, economic, financial and other problems facing the states.’

It is the hope of the League of Women Voters that incorporation of these proposals in a constitution will advance this cause.”

CHAIRMAN: Do any members of the Committee desire to ask Mrs. Merrill any questions? Mrs. Hacker.

MRS. HACKER: Mrs. Merrill, I understand, by implication, that the League seems to favor the principle of proportional representation? I wonder why? Where has it been particularly effective and why, in the basic philosophy, did they advocate it?

MRS. MERRILL: Well, I wouldn’t say that we do. We only say that there should be a possibility of having it. We wouldn’t want it forbidden. No doubt they have studied it in the past, but I haven’t had any part in that recently.

MRS. HACKER: No, but I would judge that your group, by implication, does favor it. Could I not?

MRS. MERRILL: I think you could, yes.

MRS. HACKER: Well, I was wondering why. I am very much interested in the subject.

MRS. MERRILL: As far as the Legislature is concerned, I don't think we have given much thought to it; but as far as city elections are concerned, it seems to work out very well in certain places, in Ohio, New York City, and so on.

MRS. HACKER: I see. Where do you think it is particularly effective? Would you think New York City was a shining example of its success?

MRS. MERRILL: I really don't think my opinion would help very much in your deliberations here.

CHAIRMAN: Any other questions of Mrs. Merrill?

MR. CAVICCHIA: Mrs. Merrill, towards the end of your paper you read that there was, in substance, a need for strengthening the Legislature. All I've heard to date is something about the strengthening the Executive. Would you care to elaborate on that strengthening of the Legislature?

MRS. MERRILL: It was a quotation from a recent article in the *National Municipal Review*, one written by Joseph Harris, in which he goes into some of these procedures. He feels that by giving more responsibility to the legislature and by, let us say, improving the procedures of the legislature, its prestige would be heightened, for one thing, and it would be able to do its work more effectively. There seems to be a general feeling that we don't trust legislatures, and there should be some effort to correct that.

MR. HAYDN PROCTOR: Mrs. Merrill, I understand you to say that you felt the Governor should appoint all the administrative officers. Is that right?

MRS. MERRILL: No, what I said—what this says here—is that one officer and one only should be appointed by the Legislature, and that's the Auditor.

MR. PROCTOR: The Auditor?

MRS. MERRILL: The man who keeps check for the Legislature on the spending of its funds.

MR. PROCTOR: And how about the Treasurer?

MRS. MERRILL: Well, I think the committee, when it discussed this, felt that the Treasurer was a part of the administrative machinery of the State, the sort of post-audit that the government needs to keep, and not, well, let us say, a continuing post-audit. Perhaps you would call him a "comptroller" or "auditor," but since we wrote this I ran into something that indicated that this person might be called "comptroller." At any rate, thinking in terms of a fiscal officer who would keep a continual post-audit for the Legislature of the funds.

CHAIRMAN: How would you feel, Mrs. Merrill, about having the fiscal officers elected by the people, as they do in New York, rather than by the Legislature in joint session?

MRS. MERRILL: We didn't discuss that at all. I couldn't speak for our organization. I come from New York. It doesn't worry me personally.

CHAIRMAN: Senator Lewis, did you have a question?

MR. LEWIS: Mrs. Merrill, first of all as a legislator I am opposed, generally speaking, to passing bills under suspension of rules, but you suggest that where that becomes necessary, it be the Governor who is to determine that an emergency exists. Why should that be a matter within the province of the Governor, and not within the province of the Legislature to determine?

MRS. MERRILL: I think the reason we put that proposal in was because the Legislature itself in practice doesn't limit at all, and we feel that there needs to be a check from some outside source.

CHAIRMAN: In other words, you feel that even though there be a rule requiring readings on separate days and that the printed bills in final form be on the desks for a certain length of time before final action, if the Legislature were enabled under the Constitution to declare an emergency, it would result in a suspension of the rules any time the Legislature felt like suspending the rules, just as they do now. That's your position?

MRS. MERRILL: Well, I believe it is. Yes.

MR. LEWIS: Suppose you had a requirement that all bills must be on the desks of the legislators, say, at least one day. Would that be sufficient?

MRS. MERRILL: Well, what we say is that of the three proposals we make, we consider one is most important, and that is that the bills be printed in final form and on the desks of the legislators three days before action. That's what the committee thinks. I can't go any further than that and still be speaking for them.

MR. LEWIS: That in itself would not answer your question, because the bills could be on the desks of the legislators weeks in advance and yet not be moved until a particular day. In other words, if you would provide that after a bill has received a second reading, it must be on the desks one day before being moved to final passage, that would at least assure every legislator notice that it would come up for final passage and that one day would intervene for consideration.

MRS. MERRILL: Of course, that's the first of those three proposals—that one day intervene between each reading of the bill.

MR. CAVICCHIA: What is meant by the final form of the bill?

MRS. MERRILL: As we understand it, what we mean by that phrase—I don't know what it legally means, but what we mean is—

the way it actually passes, the way it's signed and the way it becomes law. That is, with all its amendments, with any commas added.

MR. CAVICCHIA: So that there is no possibility of amendment, then. Is that it?

MRS. MERRILL: That's right. It's after the amendments.

CHAIRMAN: Well suppose, Mrs. Merrill, that a bill was on the desk in what purported to be final form, but as it was moved for third reading, somebody discovered that there was an imperfection in draftsmanship—a comma was misplaced or omitted, or something or other of that kind. Your proposal would prohibit the passage of the bill.

MRS. MERRILL: For three days.

CHAIRMAN: For three days in addition.

MRS. MERRILL: You would have to get it printed overnight.

MR. LEONARD: How about bills, Mrs. Merrill, coming from the other House? Would you propose that they lay over three days before they could be acted on, in the event of an amendment in the other House? In other words, suppose an Assembly bill, passed in the Assembly, in its final form goes to the Senate and is amended in the Senate. Do you propose that it would have to lay on the desk three days in the Assembly before the Assembly could concur in the Senate amendments?

MRS. MERRILL: I would. I believe that's what we mean.

MR. CAVICCHIA: Well, Mrs. Merrill, is that proposal consistent with the idea of strengthening the Legislature—when you seek to curtail its procedures?

MRS. MERRILL: Well, don't you think, on the other hand, that this very hasty passage of bills weakens the Legislature? It would strengthen it, it seems to me, if people had to give more consideration to what they were doing and had to be more careful about what they were doing.

MR. CAVICCHIA: I say this, that in my legislative days we passed many bills under suspension of bills that were for the public good.

CHAIRMAN: Contrariwise, we passed many under suspension of rules that were not for the public good.

MR. CAVICCHIA: I agree to that, but I am just trying to get at the fundamentals here.

MRS. MERRILL: We drew these proposals up with the thought that they would add to the prestige of the Legislature, that any of these procedures that strengthen the confidence of the people in the Legislature were good. You see, when this work under suspension of rules is made public, people who don't know anything about the Legislature, never go there, and who depend on the sort of thing they hear, lose confidence in it.

CHAIRMAN: Isn't the basis of your suggestion two-fold, Mrs. Merrill: first, that every member of the Legislature have an adequate opportunity to consider bills which he knows are going to be moved on third reading and final passage, and second, to give the members of the public who are interested in the progress of legislation ample opportunity to follow the progress of the bills?

MRS. MERRILL: That's it, and we feel that a very slight change such as someone mentioned here, a change in punctuation, might be a great change insofar as the meaning is concerned.

CHAIRMAN: No question about it.

Are there any further questions? . . . Thank you very much, Mrs. Merrill. We appreciate your coming here.

MR. LEONARD: Mr. Chairman, that completes the list of people who have registered. However, I believe Mr. Henry Reed Bowen is in the room, and he sent every member of the Convention a letter. He would merely like to register his name on the record, with the request that that letter be made a part of the record. Mr. Bowen could speak for himself, but he doesn't want to make a presentation. He merely wants to register his name and ask that his letter be made a part of the record.

CHAIRMAN: Dr. Bowen's presence will be noted, and the members of the Committee will be requested to read the communication which he has sent us. The Committee will now stand adjourned until immediately following the recess of the Convention proper on next Tuesday, unless somebody else here would like to make any presentation.

The meeting will be adjourned.

(The session adjourned at 4:05 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 8, 1947

(Morning session)

(*The session began at 10:00 A. M.*)

PRESENT: Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Morrissey, O'Mara, Proctor and Sanford.

Chairman Edward J. O'Mara presided.

MR. EDWARD J. O'MARA, CHAIRMAN: May I ask everybody who wants to address the Committee, and all members of the Committee who desire to ask questions, to be careful to speak into the microphone? There is no stenographer present this morning and they will rely entirely upon the soundscribing.

The first witness who is registered is Mr. Albert S. Bard of New York and New Jersey. Mr. Bard, will you please state for the record what organizations, if any, you represent?

MR. ALBERT S. BARD: I come to explain to you a proposal sent to the President of the Convention by the New Jersey Roadside Council. I'm not familiar with your procedures and I don't know to what extent the text of the proposal has been reproduced and sent about or submitted to the members of the Committee. So I will first read the proposal clear through, and then I would like to take it up clause by clause.

I want to state at the very beginning a special interest I have in the clause, because it is a clause that I drafted some years ago for other purposes. When the New Jersey Convention was created, it seemed to me that if it felt kindly toward the proposal and should adopt it, it would be worth taking a leadership which, I hope, might lead to the adoption of this very same clause elsewhere, because the conditions which suggest a need for the clause exist all over the country.

Let me read the proposal. It is entitled "Planning and Conservation," and the text is as follows (*reading*):

"The natural beauty, historic association, sightliness, and physical good order of the State and its parks, contribute to the general welfare and shall be conserved and developed as part of the patrimony of the people, and to that end private property shall be subject to reasonable regulation and control."

I'm a lawyer. I've studied for many years the law relating to planning. I've been particularly interested in the esthetics of plan-

ning. I've observed, through a long life, the difficulties that communities have in pulling together and creating satisfactory results from the community point of view. There is always an off-ox somewhere. There is always somebody who is conservative, often stupid, often standing in his own light and refusing to pull together with his neighbors.

Here is a principle which, if embodied in the constitution of a state, would go far to encourage the courts, when they come to these problems of planning and of community cooperation, to take a little of the emphasis off individual private property. At the very end of the proposal there is the safeguard that restrictions cannot go beyond a reasonable point. So there is always the complete safeguard, so far as the Constitution and the courts are concerned, that any regulations adopted pursuant to this statement of how far the police power may go, would always be operative and protective to the private property.

I want to emphasize to you, ladies and gentlemen on this Committee, that during a life in which I have kept my eyes open and been interested in community development and in the practical difficulties of getting people to pull together, you always meet with somebody who is pretty slow in his cooperation. He is fearful and timid; he doesn't appreciate the way in which public benefits come by pulling together and by teamwork in a community. Under our American law we put a very high emphasis on the right of private property, even though it stands in the way of improvement and increase in the value of the property, just because people are lacking in understanding, or are cranky, or that kind of thing. A thousand experiences and examples might be given, but one is perfectly illustrative of the puzzle that people are up against when they try to get a cooperative job done through the willing cooperation of landowners.

For years and years at the corner of 42nd Street and Fifth Avenue in New York there stood a building owned by a friend of mine. He had not the forethought, or had not the public interest, I'm sorry to say, although he is a large landowner—owned a lot of important property in New York—he had not the forethought, or understanding, or willingness to contribute to the appearance of Fifth Avenue by putting in certain regulations restricting his tenant who leased this big building during a long number of years. The tenant who had possession and control of the building erected an enormous roof billboard. Of course, it was the most important place, almost, on Fifth Avenue at the corner of 42nd Street. The Public Library opposite gave it extra space and extra importance.

The Fifth Avenue Association, which controlled developments through voluntary agreement on the part of Fifth Avenue owners,

tried to stop him, tried to induce him to take his billboard down and to comply with the regulations of the other owners. They sought these ends in vain. The billboard on top of this big building, the most conspicuous on Fifth Avenue, brought in, of course, a considerable amount of money every year. Therefore, the appearance of the rest of the avenue, the restraint, indeed, on the part of the other landowners on Fifth Avenue who didn't do this thing, made this monstrosity all the more conspicuous, and for its purpose as advertising more revenue-producing; because nobody else, except this one man who would not comply and would not conform to his neighbors, got the benefit of the nonconformance, which made his board particularly conspicuous.

Now, I have gone to some length to show what people do unless they are compelled by the community sentiment, and compelled by some pressure from law—what they may do and frequently, unfortunately, do do.

Now, let me go back and read this clause again, because there are several points I want to emphasize. It's a good clause. It has been drafted with experience behind it and there is the advice of others in its phraseology. I think if it could be adopted by New Jersey it would really make New Jersey the promoter of that which is, I think, a model form with respect to this particular problem that communities now have to deal with, as planning comes more and more to the fore in our modern developments. (*Reading*):

"The natural beauty, historic association, sightliness, and physical good order of the state and its parks, contribute to the general welfare . . ."

All of that, of course, is something that we already know, but when you get into court the judges don't always put upon it the same emphasis that we do when it comes to applying these principles in the face of the claims of private property. Poor old Europe has lost one of its great assets, an asset which appeals to the traveler, in the loss of many of its parks. One of the biggest businesses is that of the tourist. The same is true in California and in some of our other states, and in parks of the states. The biggest business is the tourist business. We all know that natural beauty, and the historic associations here in New Jersey, where they are many indeed, the sightliness and physical good order of the state and its parks, contribute to the general welfare.

This principle that I am appealing to you to study and give sympathetic consideration to, goes on and says that as a part of the Constitution of the State of New Jersey, these things should be conserved and developed as a part of the patrimony of the people. Now I want to emphasize that clause, "as part of the patrimony of the people." Some of you may remember the statement of Emerson. I don't remember the language; I won't attempt to quote, but

he refers to the ownership of the landscape. A's farm is a part of it, and B's farm next door is another part of it, and C's farm, and so on, but neither A, B, nor C owns the landscape. It is more even than the sum total of those farms. It's a part of the patrimony of the people.

Now I come to the tail end of the clause. What should we do about it? To that end—to the conservation and development of the patrimony of the people, as distinct from the private individual—to that end private property shall be subject to regulation and control, but that regulation and control must stop at the point of reasonableness. To "be subject to reasonable regulation and control"—with respect to that, you can trust your courts.

MR. DOMINIC A. CAVICCHIA: May I ask the witness a question?

CHAIRMAN: Yes, Mr. Cavicchia.

MR. CAVICCHIA: You say you have studied this problem. Have you studied it from the standpoint of the Federal Constitution?

MR. BARD: Yes.

MR. CAVICCHIA: Have you any thought on that, briefly?

MR. BARD: Yes. Thank you for making the suggestion. Many of the clauses of the Federal Constitution depend—the decisions which I think you have in mind turn on the question of what is arbitrary and what is proper classification with respect to the regulation of persons and property. Anything that is arbitrary is not reasonable; that the courts will tell you over and over and over again. This takes care completely not only of the Federal Constitution but the principles which draw the line between what is proper regulation of property and persons and what goes beyond reasonable regulation. Does that answer the question?

MR. CAVICCHIA: Thank you.

CHAIRMAN: Mr. Bard, would you care to leave a copy of that statement with the Committee? It would be very helpful.

MR. BARD: Yes, I'd be very glad to. I think you have received it from several directions. I'm not sure whether Commissioner Miller sent in a copy. I gave him a copy of it. I ought to say, if I'm not taking too much time on this, that the Council has had a good deal of experience with the difficulties connected with the abuses of the roadside. This comes to you from the New Jersey Roadside Council. The community must control the highways—and not merely the highway on which the vehicles travel, but the roadsides which are really part of the transportation corridor, because the minute you put a big road through a country it changes the character of the roadside on each side.

The transportation corridor, unless well controlled, just develops into the kind of thing you see between Baltimore and Washington. There are fifty miles of the most desperate roadside slums, dam-

aging to property value and damaging to the feeling of the community. People go through it just as fast as they can, and they don't look at it except to curse it. Now, that isn't the kind of thing that America ought to have. New Jersey, in a sense, I realize as you do, is more or less of a corridor state. Many people go from New York to Pennsylvania through New Jersey, because that is the way they go. But it certainly is a pity to have New Jersey develop into a situation where people don't want to stop, where they want to get through it as fast as they can.

I know that our State Government here in New Jersey is embarking on a very considerable program of highway construction, pouring millions of dollars into it. It is simply silly, just silly, that we don't get the value out of those things because we allow people alongside to do as they please for a picayune sum. The amount they get out of it is nothing, but it seems big to them, and the public is vague and far away and the subject of improvement is something else again. There you have your interference which spoils the whole thing.

COMMITTEE MEMBER: Mr. Chairman, may we ask the witness to leave this, to be sure the Committee gets it?

CHAIRMAN: Yes, I've already asked him. Thank you very much, Mr. Bard.

The next witness to be heard by the Committee will be the State Treasurer, Mr. Hendrickson.

MR. ROBERT C. HENDRICKSON: Mr. Chairman and members of the Committee:

I want to say at the outset that it is a great privilege and a pleasure to appear before this Committee. I recognize immediately that I am not here because of any special knowledge that I have on the subject of legislation, but probably because I was chairman of the Revision Commission of 1941 and 1942. I am here at your invitation. I am also here at the request of the Committee on Constitutional Revision, headed by Mr. Kerney, and the organizations which that committee represents. As my remarks will disclose, I am not entirely in accord with all the things that they recommend, but in substance I agree generally with their proposals.

I would much prefer in treating with the subject of legislation, sitting here with so many of my former colleagues, to let you put me on the spot and question me and discuss such phases of the legislative problem as you might want to; but I don't think that is the orderly way to do it in a gathering of this kind and in a group of this kind. I have therefore carefully prepared my basic thoughts on the subject, with the hope that when I finish with the paper you will feel quite free to then put me on the spot, if you can—and that isn't a challenge.

In its letter of transmittal to the Governor, the Legislature and

the people of New Jersey, the Commission on Revision of the New Jersey Constitution appointed pursuant to the Laws of 1941 conceded at the outset that it was not submitting a "model Constitution." It said, however, that the document submitted "sets forth, instead, what your Commission believes to be the requirements to secure to New Jersey the benefits of experience in public affairs extending over a century and a half." As indicated in the Commission's report, it sought the best informed state opinion, examined the constitutions and constitutional experience of other states, and attempted wherever possible to avoid the compromises which might impede or destroy the fundamental precepts of government in New Jersey. In other words, the Commission fully recognized both its opportunities and responsibilities, and I can say for all the members thereof—and I am talking about the 1941 Commission—that with unselfish devotion to the task it had, they attempted to give to the Governor and the Legislature, from whom they derived their authority, and to the people of New Jersey, whom they served, the very best document that experience, training and patriotic motives could conceive.

In my initial appearance before the Judiciary Committee of this Convention I have already dealt with the aims and purposes of the 1942 Commission—and, by the way, I may at times call it the 1942 or 1941 Commission; it was a Commission created in 1941 which finished its work in 1942, so if I use the wrong year, you won't be confused. As I said before, in my previous appearance before the Judiciary Committee, I dealt with the aims and purposes of the Commission in its treatment of New Jersey's judicial needs. At this time I shall try to treat as briefly as possible with our legislative processes, their faults and a few of the changes by which these faults might be either minimized or corrected entirely.

It was early in my legislative career when I learned that our legislative sessions were both unnecessarily long and unduly complicated. I knew from my experience that our legislators were underpaid; that, with but few exceptions, notably the Judiciary Committee, meetings of legislative committees were seldom held and that when they were, there was little or no discussion of the pressing legislative problems. For many years I labored under the assumption that these were probably common faults in every legislative body in our country. Then, as a result of my association with the Council of State Governments, which brought me into close contact with legislators from nearly every state in the union, I made comparisons for my own enlightenment and found that though there was room for improvement in all of our sister states, New Jersey was lagging far behind a great number of them in the treatment of its legislative business.

Here I would like to say that in the past two sessions—and I have only been here for the past two sessions—I have noted considerable improvement. But under the present system, based upon a practice of unlimited sessions, meeting on an average of one or two days a week with grossly inadequate compensation for its members, we can never have the sort of legislative efficiency which will enable us to point with pride to our legislative sessions. Anyone who has served as a member of New Jersey's Legislature and who professes any integrity whatsoever must concede that the present constitutional framework, so far as it applies to the Legislature, is fraught with weaknesses which have so frequently in our memories produced long, shoddy and muddled sessions which, in some instances, because of the confusion, obscured rather credible records of accomplishment. I mean to say by that, that in the some eight-odd years or more I spent in the Legislature, I have seen the end of the session come with a real record of accomplishment, but, because of the confusion and muddling that went on through the sessions, the Legislature never got full credit for what it really did, nor did its individual members.

That the Legislative Article of our present Constitution is, on the whole, basically sound, I do not attempt to deny. But changes in personal habits, economic pursuits, social needs and political horizons must be met by constitutional government if that form of government is to survive. Recognition of this fact should make us aware that the "squeaks and rattles" which we now hear at each succeeding session of the Legislature are danger signs indicating that our Legislative Article needs revamping.

It is my considered opinion that the revised Legislative Article proposed by the 1942 Commission was designed to attack all of the serious weaknesses prevalent in New Jersey legislative processes at their source. Let us look briefly, if you will give me the time, to the summary of the Commission's proposals.

To begin with, it provided for biennial sessions of not to exceed 90 days' duration. Special sessions thereunder could be called for a single specific purpose, not to last longer than 15 days. The terms of our Senators were fixed at four years and of our Assemblymen at two years, with elections in odd-numbered years in order to remove the influence of Presidential and Congressional elections, which, I think, is highly important.

The salaries of the members of the Legislature were to be fixed under our proposals at \$1,500 per year, and no member of the Legislature would be eligible for appointment to a state office during the term for which he was elected and for one year thereafter. That would have barred me from being State Treasurer.

CHAIRMAN: I was about to ask you that, Mr. Hendrickson.

(Laughter)

MR. HENDRICKSON: And would probably have been very beneficial to me financially—

CHAIRMAN: But the State would have suffered a great loss.

MR. HENDRICKSON: Thank you.

The Legislature could not appoint or elect any executive, administrative or judicial officer, except the State Treasurer and State Comptroller. I think, in fairness to myself as a member of that Commission, I had better explain that because I was one of the two on the Commission who argued that the Treasurer and Comptroller should follow suit with all the other appointive officers, I was beaten down with the argument that these officers were the watch-dogs of the Treasury, that the Legislature appropriated the money, raised the money by taxation, and that it was their right to have these constitutional officers as their agents, so I finally compromised and yielded my own views.

The Senate under our proposals was to act upon all nominations within 30 days and to vote in public on those nominations. In my experience in the Senate over a period of years, I think that is part of it. I think the public has a right to know exactly what happens in these executive sessions, etc. They know anyway ultimately, as you will remember, Senator (*speaking to the Chairman*), and they might as well know in the beginning. The trouble is, as the thing now stands they get a very garbled view of the situation.

CHAIRMAN: I think, Mr. Hendrickson, if you will pardon an interruption, that that is a matter which the Executive Committee is deciding because it has to do with the nomination and confirmation of officers by the Executive.

MR. HENDRICKSON: We treated with it under the Legislative part.

CHAIRMAN: I don't think it is before us for consideration.

MR. HENDRICKSON: I am sorry.

Under our proposal, lobbying would be prohibited in legislative chambers, and it would be regulated through a system of compulsory registration. I suspect that some of our state departments would have to register under that.

A seven-man legislative council would be established, consisting of the Governor, or, in his absence, the Attorney-General, the President of the Senate, Speaker of the House, majority and minority leaders of the Senate and majority and minority leaders of the House. The duties of this council would be to carry on legislative work between sessions, make studies, prepare legislative programs and act as a contact between the Legislative and Executive Branches of government. The six legislative members of the legislative council would receive compensation under our proposal of \$1,500 a year

for their services on the council—this in addition to their regular legislative salaries.

In our proposal we treated with the right of labor to organize and bargain collectively, provided that it would not be impaired under any legislative processes. Perhaps that should be treated in some other Article.

CHAIRMAN: That has been referred to the Committee on Rights and Privileges.

MR. HENDRICKSON: The remaining changes of the 1942 proposals were comparatively unimportant. One allowed for modification of the zoning and condemnation clauses in order to safeguard public property and permit highway beautification and the building of parkways. The other was designed to curb mandatory expenditures by strengthening the prohibitions against special legislation.

This summarization of the Commission's efforts—that is, with respect to the Legislative Article—clearly disclosed the major weaknesses at which our objectives were aimed. For example, we felt that despite the disadvantages which go with biennial sessions, they are far outweighed by advantages in legislative effectiveness, particularly as I have observed our experience in New Jersey. The constitutions of all states, excepting Massachusetts, Rhode Island, New York, South Carolina and New Jersey, call for sessions every other year.

With biennial sessions and the 90-day limit on the duration of sessions, our Commission felt that legislative attention would be concentrated on the more important proposals, with resulting short and business-like sessions. Here may I say that although I am personally still somewhat partial to the annual session, I am convinced that the biennial session would encourage more men of ability, whose time is limited, to seek seats in the Legislature? Whether this Convention adopts, for proposal to the people, annual or biennial sessions, is from my point of view relatively unimportant. But it is important and extremely important—in fact, as I see it, it is one of the “musts” of this Convention—that the terms of our legislators be extended and that their salaries be increased.

The 1942 Commission proposed that the term of the members of the Assembly be increased to two years and that the terms of the Senate be increased to four years. With this proposal I am completely in accord.

As to the question of salaries, we all concede that the present salary of \$500 is ridiculous—and I might say that I would just as leave serve as a member of the Legislature for nothing as for \$500—but your problem is, at which figure should the salary be paid? In 1942 it was proposed at \$1,500 per year, and at that time I thought that this was sufficient. Now I am not quite so sure that

\$1,500 under present conditions is adequate compensation for good, hard-working legislators, and we have many of them. Although I realize the dangers attendant upon allowing the Legislature to fix the salaries of its own members, I am inclined to believe, both from my experience as a member of the Legislature and from my association with business organizations which must answer to stockholders, that the average intelligent legislator would hesitate a long while before he voted to put his salary at a range beyond that which would be reasonable under the circumstances. Perhaps the thing to do is to fix a top range and allow the members to work within that range. In any event, I cannot stress too strongly the importance of allowing an adequate and just compensation for services rendered. I feel this would have saved the State much money over the years in the past had we been able to pay our legislators properly. It is not becoming to our day and age to expect a man or woman to neglect his business or profession while in the public service, without providing compensation commensurate with that service.

As the Commission on Revision pointed out in its report, one of the major causes of legislative confusion over the years has been the lack of opportunity for full and careful consideration of legislative matters. Each member of the Legislature is expected to be familiar with criminal laws, state departmental needs, the tax structure, and a host of other intricate and involved questions. Meanwhile, most committees in the Legislature meet neither long nor often. To aid in consideration of legislative affairs, many states have set up legislative councils which devote all their time to the study of proposed legislation, with a full-time research staff assisting.

After careful survey and study of the experience in other states, it became the unanimous and considered judgment of the 1942 Commission that a properly established legislative council would offer definite advantages. The council, as established in our draft of the Constitution, seemed to us to promise guidance, coordination and planning on a permanent basis. It would, of course, be the duty of the council, between biennial sessions, to be constantly alert to the legislative problems requiring technical competence and to investigate and explore the manner in which they should be treated. Once established, I think you would find that during the actual session of the Legislature the council's program would generally chart the legislative course. I know it would take some years and some experience. Ultimately, I think that would develop. At the conclusion of each session the council would follow up all of the important new legislation enacted, to the end that its practical results would be known before the next succeeding session. The improvement which would result from such a "post-audit" arrangement would be immeasurable.

In all of its deliberations on the Legislative Article, the Revision Commission of 1942 was constantly mindful of the advantages and disadvantages which go with the limitations on legislative authority. After careful consideration of the subject of mandatory local expenditures, for example, we concluded that this problem cannot be solved through constitutional provision without confusing the present system of state and local relationships. We did attempt to tighten up existing restrictions on special legislation which relates to salaries and other rights of public employees, in a manner which would essentially compel uniform treatment of all public employees whose responsibilities and situations are similar. That, we felt, was only fair.

It was in the Legislative Article that we recognized the inalienable right of working men and women to organize and bargain collectively, as I have indicated.

Other changes, such as those related to the protection of public property and the beautification of highways and the building of public parks, were included in our draft so as to remove any possible implication from the zoning provisions in our present Constitution. Incidentally, on that subject, I think we are going to have to treat with some provision which will allow for legislation in the development of airports and of the air industry generally.

As I have already indicated in the main, the present Legislative Article is sound, and if you gentlemen will concentrate your efforts on those more glaring weaknesses, seeing to it that the Article on which you are working is well coordinated with the other Articles, you will contribute your part to a document which, in my judgment, cannot but help win the support of the people in November.

It is my firm conviction in all that I have seen of this Convention to date that you are not only going to write one of the finest state constitutions in the nation, but that you are each making a great contribution to that "more perfect union" which will one day, I hope, lead the people of the world to peace and happiness under constitutional government.

And now, gentlemen and ladies . . .

CHAIRMAN: Judge Lance.

MR. WESLEY LANCE: I believe that New Jersey is in the minority in that it gives the sole appointing power of judges, except vice-chancellors and prosecutors, to the Governor. Is that correct? Most states have some other method, such as election by the people?

MR. HENDRICKSON: We are in the minority; that is right.

MR. LANCE: Now, if you couple with our present legislative practice the selection of judges and prosecutors by the Governor—that, with a constitutional provision that the Governor shall be the sole and exclusive appointing authority—would not the practical re-

sult be that a New Jersey Governor would have a greater quantum of appointing power than any other Governor in the United States?

MR. HENDRICKSON: That is probably true, but that is a matter, I think, for the Executive Committee to deal with at this point.

MR. LANCE: We have within the province of our Committee the appointing power of the Governor.

CHAIRMAN: No, I don't think so, Judge Lance. I think that is in the Executive Article.

MR. HENDRICKSON: You have a limitation on appointing power.

CHAIRMAN: Appointing power by the Legislature.

MR. ARTHUR W. LEWIS: Mr. Hendrickson, if you limit the legislative session to 90 days, as proposed in your 1942 Commission report, would not that have a tendency to force the legislators into quick and probably hasty and ill-considered legislation?

MR. HENDRICKSON: I gave a great deal of thought to that, Senator, in our deliberations in 1941 and 1942. I was very much concerned about that possibility, and I looked into it in some other states. I found that it had done that in some, and in other states it hadn't. From the best information I could get, in the majority of states where they had limitations it worked out very well.

MR. LEWIS: Would not that be particularly so if you had biennial sessions, as proposed?

MR. HENDRICKSON: Don't misunderstand me, Senator. It could do it; it could do the thing you suggested.

MR. LEWIS: I am thinking at the moment that during the past session we had over 800 bills introduced. It is conceivable, if we met only once in every two years, that we may have a great many more than 800 bills to consider. To deal with that great mass of legislation and have a time element, it would seem to me, would very readily put the legislators in a difficult position.

MR. HENDRICKSON: If you carried on with your present structure and then limited the sessions, you would be exactly in that muddle, but if you do these other things that have been recommended and limit your sessions, I think you will have no trouble. For example, the question of a legislative council. If you had it, you would cut down materially on those 800 bills. I hold no brief for the form of legislative council that we propose—I mean in its formation. I think perhaps your legislative council should be even larger. I would suggest greater compensation than we recommend, so that you get these people to work on a full-time basis, and that will eliminate your volume of legislation.

MR. LEWIS: Well, you say in your report that the duties of the legislative council shall be to carry on legislative work between

sessions. Would not that create a Legislature within a Legislature? Would not that create a little Legislature, taking away from the body of the Legislature as a whole its proper functions?

MR. HENDRICKSON: It could, but I don't think it would.

MR. LEWIS: Have you given thought to a research council instead of a legislative council—in other words, giving that council the duty to study legislation and to gather together statistics and research work for the benefit of the Legislature as a whole, rather than to delegate to that council legislative powers and functions?

MR. HENDRICKSON: Well, that might be even better, but I think your Legislature should be represented. I think there would have to be a close coordination between your research council and the Legislature, because I don't think you want to take away the legislative viewpoint, which is very important, and throw it into a technical group. I mean, technicians know the way things ought to be done lots of time, but the legislator, because he knows the people and has that sense of touch with human nature, knows the things that can't be done even though it might be efficient to do them.

MR. LEWIS: Getting back to my first question, it is more important for the legislators to consider these bills on their merit and give all the time and attention necessary to solve properly the problems before the Legislature. Now, if you are going to put a time limit on this, are you not going to hamstring and hog-tie, so to speak, the Legislature?

MR. HENDRICKSON: I don't feel so, Senator, frankly. Maybe the time limit would be extended; maybe 90 days is not enough, but some states have a limit of 60 days.

MR. LEWIS: Now, if you had biennial sessions, there would be a period of time when the Legislature would not be in session. The problems of the people are constantly, or annually, shall I say, before the Legislature, and if you are only going to meet once every other year, you either have to call special sessions or there is going to be a lapse of time when the problems of the people could not properly be considered by the Legislature.

MR. HENDRICKSON: Well, if you are concerned about that—and, as I have indicated, I am not—then the thing to do is to extend your time limit, but I think there ought to be a time limit. I know there are those who disagree with that.

MR. LEWIS: One other question, Mr. Hendrickson. Would you favor differentiating between the Senate and Assembly with regard to compensation? In other words, do you feel there is any justification for paying to members of the Senate a greater compensation than to members of the Assembly?

MR. HENDRICKSON: No. I think the members of the Assembly,

those who work, do just as much work as those who work in the Senate.

MR. LEON LEONARD: Senator, these squeaks and groans, I think you called them, of the Legislature, don't you think that they could be oiled up by rules of the Houses and by statutory provision, rather than by attempting to do it by constitutional provision?

MR. HENDRICKSON: They could, yes. We can do anything by rules if people live up to rules. That gets back to the old question of personnel in any situation. I mean, with good personnel you can make any system work, but you will not always have the best, of course. So you put these limitations on people to make the good suffer with the guilty, and that is what it gets back to.

MR. LEONARD: Of course, a constitutional prohibition would make the good suffer equally with the guilty.

MR. HENDRICKSON: It frequently does.

MR. LEONARD: For instance, one of the squeaks that I have had a little personal experience with was the alleged roll call of the House of Assembly during the past session of the Legislature. By reason of a statute that was passed, we are providing for a mechanical roll call. I assume that the rules of the House will have to be amended to carry out the mechanics of that so-called mechanical roll call. That is eliminating one of the so-called squeaks, in my opinion. Is it in yours?

MR. HENDRICKSON: That is right, very definitely.

MR. LEONARD: And a major one.

MR. HENDRICKSON: A very major one.

MR. LEONARD: That has been very well accomplished by statutory provision and by changing the rules. Now, can't we in a general scheme, outside of the basic propositions, take care of all of these conditions that you speak of by either statutory provisions or a change in the rules, rather than by attempting to treat them by constitutional provision?

MR. HENDRICKSON: Please don't misunderstand in any sense the recommendations that I have made. The last thing that I would advocate would be that this Convention should start to legislate. I hope that every Committee in this Convention will bring forth just as short a document with reference to its own Article as is possible. I think the less language that is used, the more generally you state your proposals, the better off the State is going to be; so that I don't advocate legislation in a constitutional document. Anything but that! I agree that you want to leave these things elastic. I have, Mr. Speaker, drawn too many wills looking into the future to know what limitations will sometimes do.

MR. LEONARD: You speak of unduly long sessions. Isn't it true that in recent years sessions have been much shorter?

MR. HENDRICKSON: I said at almost the very beginning of

my remarks that I have noticed a very definite improvement since I have been back with you all.

MR. LEONARD: I mean a 90-day mandatory provision—in your opinion, will or will it not cut down the volume of bills?

MR. HENDRICKSON: I think it will cut down on the volume of bills, because if you happen to get into an extended session, which you sometimes can't help—for instance, you may have another period of unemployment relief or some similar emergency—and when you get into those long periods of bills involving controversial issues, additional legislation just keeps piling up on you. Despite all your effort to stop it, despite the courage of the Speaker and the courage of the President of the Senate and the leaders, all they can do just won't stop the flow of this legislation that comes.

MR. LEONARD: If there was an emergency and you were in a biennial session or a limited session, you would have to call a special session to meet it, would you not?

MR. HENDRICKSON: Oh, sure.

MR. LEONARD: And then you would be open to the same possibilities of bills being dumped in a special session.

MR. HENDRICKSON: No, not under our proposals of 1941, because in treating of the special session, we limited the special session to a specific purpose and tied it up pretty tightly so that it would not run away with itself.

MR. LEONARD: I notice you said in 1941 that you recommended a \$1,500 salary, and that you now feel it ought to be higher. I wonder if you would want to make a statement in dollars and cents as to what your belief would be.

MR. HENDRICKSON: That is a little difficult, but I still live with a lot of my former colleagues in the Legislature in Trenton, and I see them come down and spend a lot of their time. I know that some of these folks just can't afford to give the time that they give, but they give it anyway—just like I did myself for a period of more than eight years. It was a very costly thing for me. I don't regret it one moment. I would not take any price for the privilege that I felt that I had while I was a member of the Legislature, but it isn't fair just because a person is a good scout to take advantage of him. Now, when you get to specific sums, I have no fixed notion on the subject at all, but I feel quite definitely that \$1,500 is not adequate for a job well done.

MR. LEONARD: There was a presumption in favor of that with all members of the Legislature, wasn't there?

MR. HENDRICKSON: I think by and large—I know there is a lot of criticism of the Legislature—but I think that by and large, if you look at our legislative records over the years, we have got to pay a lot of tribute to a lot of men for a lot of hard work.

MR. CAVICCHIA: Mr. Hendrickson, do you honestly feel that if we provided for a legislative council that that would actually reduce the flood of bills annually?

MR. HENDRICKSON: I honestly feel that.

MR. CAVICCHIA: Do you, looking over our common experience, still hold to that conviction?

MR. HENDRICKSON: I do.

MR. CAVICCHIA: The legislative council proposal in your Commission's draft would seem to me to go hand in hand with biennial sessions, on the theory that the legislative council would be the interim agency working on legislative matters. Isn't that so?

MR. HENDRICKSON: That is right.

MR. CAVICCHIA: Now, if we were to have annual sessions of the Legislature, then the legislative council would not seem to loom so important in the scheme, would it?

MR. HENDRICKSON: I think it is still important. I am rather wedded to the idea, and it would be a pretty hard job to convince me that it doesn't have very definite advantages.

MR. LANCE: This goes to the legislative council. In the event that the majority of the Convention did not desire to give the legislative council a constitutional status, would you recommend as your second choice that the compensation of legislators be allowed to be flexible so as to give them increased compensation if they served on a council and if the Legislature in its wisdom desired to set up a council?

MR. HENDRICKSON: Oh, yes, I do.

MR. LANCE: This goes to the appointing power, which seems to be slightly overlapping. It is true that the Executive Committee of this Convention will have the most to do with the question of the appointing power of the Governor. Nevertheless, this Committee deals with it in a negative sort of way because we have the power to deprive the Legislature of making certain appointments, or any appointments, in joint session. Do you recommend that the Legislature be deprived of making all appointments in joint session except, perhaps, the two fiscal officers mentioned?

MR. HENDRICKSON: Unless you want to come to the business of electing certain state officers, as they do in some states, I do. For example, in some states the state treasurer, for example, the comptroller, is elected by the people. He runs at the same time, his term is simultaneous with that of the Governor. That seems to work very well in some states, but I believe that the executive should appoint administrative officers—that is, key administrative officers—with a more or less cabinet system of government. Of course, those appointments should be confirmed with the advice and consent of the Senate. That gives your Legislative Branch a voice in the appointment.

MRS. OLIVE C. SANFORD: My question is on the legislative council. What I want to ask is: Is it your opinion that a legislative council would help the committees in their work? My feeling has always been that many of the committees were very weak in their action. Wouldn't the legislative council help them to a certain extent, in possibly the research way that Senator Lewis mentioned, but anyway in weeding out and seeing that only worthwhile things were considered?

MR. HENDRICKSON: Well, Mrs. Sanford, I have been thinking about that while I have been sitting here, ever since Senator Lewis asked the question about a research staff. I very hastily have come to the conclusion that perhaps that combination, with a technical, expert, well-paid staff to enable it to work full-time, and a legislative representation which would sit at regular periods—of course, that is a matter of legislation or rules—these experts probably would accomplish more in the long run than the legislative council of the type that we proposed in 1941 or 1942.

MRS. SANFORD: Well then, this legislative council would not have any right to do any legislating. Senator Lewis seemed to think there was going to be a Legislature inside of a Legislature. But they would not have any authority to pass anything, would they? It would be only a question of—

MR. HENDRICKSON: More of deciding policy than anything else.

MRS. SANFORD: Policy and not legislation.

MR. HENDRICKSON: Yes.

MRS. SANFORD: Thank you.

MR. JOHN L. MORRISSEY: You speak about a two-year term for the Assembly and a four-year term for the Senate, I believe?

MR. HENDRICKSON: That is correct.

MR. MORRISSEY: And the recommendation was that those elections be held in odd years so that they would not conflict with the national election, or as little as possible.

MR. HENDRICKSON: I would say that, by the way, Senator, even if I were a Democrat.

(Laughter)

MR. MORRISSEY: That might have been important in 1941.

(Laughter)

MR. HENDRICKSON: That is quite true.

MR. MORRISSEY: Would you say, then, as far as the election of the Senators is concerned, that the entire body of the Senate should be elected at the same time? If my mathematics is correct, under your system it would be impossible to elect them in four categories, but it is still possible to elect them in two. What is your thought on the probabilities of that?

MR. HENDRICKSON: Just a minute. I think we had it worked out for you in 1941 and 1942. We certainly recommended the biennial sessions and the elections in odd years, and I know we didn't destroy the present system of electing—

MR. PERCY CAMP: Two years.

MR. HENDRICKSON: That is right. I am not a good mathematician either.

MR. MORRISSEY: What I based that on was this: If you elected in four terms then, of course, you would have to run also in even years.

MR. HENDRICKSON: That is true.

MR. MORRISSEY: However, by electing half the Senate at one time and half at another time, you still maintain your balance of every-two-year elections. My question is directed to whether or not you feel that the Senate should be elected at one time—

MR. HENDRICKSON: Oh, no, I don't feel that way. I think you should preserve almost entirely, as nearly as you can, your present basic legislative features. I don't think you should change any of those basic things.

MR. MORRISSEY: In other words, you should have half the Senate elected one time and half another time, is that correct?

MR. HENDRICKSON: Yes.

MR. MORRISSEY: In regard to the Assembly—

MR. HENDRICKSON: That gives you continuity, don't you see?

MR. MORRISSEY: Yes, and I agree with that. Now, in regard to the Assembly, I know that you gave a lot of thought to this. What were your basic reasons for saying the Assembly should have a two-year term?

MR. HENDRICKSON: Well, the basic reasons were to conform to accepted tradition and principle, that the terms would be shorter. For my part, I would not object to seeing them having the same terms as the members of the Senate. I did not quarrel with that at all in the deliberations of 1941 and 1942. I don't think that's too important. It could be important. I can conceive of that.

MR. MORRISSEY: What I had in mind is this, Senator. I would think that one of the basic reasons for having an Assemblyman elected for two years, outside of eliminating the necessity of his running each year, would be the fact that he would have the opportunity to observe and learn without being compelled to submit himself within a short length of time to the people. Do you agree with that?

MR. HENDRICKSON: I certainly do.

MR. MORRISSEY: That being so, and if we had biennial sessions, wouldn't you arrive in the same position over a longer period

of time than you would with one-year elections and the annual call of the Legislature?

MR. HENDRICKSON: I don't feel that you would because you are still always on call. You are a legislator; you have that responsibility. If you don't have the sense of responsibility to remember always, from the time you are elected, that you are a legislator, then you oughtn't to be a candidate or you shouldn't go to the Legislature, and I don't think that the spirit of time is important at all. As a matter of fact, I still say that biennial sessions would in one sense be a godsend to the people. We have too many laws in every state in the union, and we have too many laws in Congress, and one way to cut them down is to have fewer sessions.

MR. MORRISSEY: In regard to that, Senator, assuming that a recommendation of that nature is accepted as you have made it, *in toto*, would it be the further thought—either your own personal thought or of the Commission, or your previous Commission—that the officers of the House and the Senate should continue for the full two years?

MR. HENDRICKSON: Oh, yes, of course.

MR. LEONARD: Only if there is a biennial session. In other words, if I may follow the Senator's logic, if there were annual sessions and the members of the House were elected for two-year terms, you would not suggest then that the officers continue for the full term?

MR. HENDRICKSON: No. Carry on as if you had annual sessions.

MR. CAMP: Mr. Hendrickson, you said something about lobbying in the early part of your written remarks, and I have an academic interest in that. What should be out of bounds for lobbying, as you understand it? I mean, how far would it go? Just the floor of the Senate and the House, respectively?

MR. HENDRICKSON: Not in the chambers of the Legislature. I would exclude it from the chambers of the Legislature, and that would include all the legislative boundary lines, as we know them to be.

MR. CAMP: That would be out of bounds?

MR. HENDRICKSON: Yes. Understand, when I talk about lobbying, I have seen, strangely enough, many advantages come out of lobbying.

MR. CAMP: It is not bad *per se*.

MR. HENDRICKSON: No. It is like everything else; it is only bad when it is abused.

MR. LEWIS: Speaking on the subject of lobbying, not only in the chambers do the legislators encounter lobbyists at a time when they should not, but in going from one House to the other, or go-

ing to the Governor's office, or anywhere around the State House—

MR. HENDRICKSON: If I had my way of making the rules, that would all be legislative territory.

MR. LEWIS: Correct. In other words, the floor of the building wherein the Legislature is in session should be free of lobbying, not merely the chamber itself.

MR. HENDRICKSON: That is right. They could sit up in the balcony if they wanted to.

MR. LEWIS: That is definitely agreeable. Now, Mr. Hendrickson, do you see any disadvantage—assuming, now, that the Senate should be for a term of four years—do you see any disadvantage in dividing the Senate into four classes and electing one-fourth of the Senate each year, so that at all times you would have three-fourths of the membership of the Senate experienced legislators?

MR. HENDRICKSON: I don't think it is really vital. I do think it is important to keep the continuity. Now, on what basis? I think it is not too important so long as it is over half.

MR. LEWIS: You feel electing half every other year would retain that continuity?

MR. HENDRICKSON: Yes.

MR. LEWIS: Now, Mr. Hendrickson, I would like to get your thinking as to the possibility of limiting the number of bills in the event that you limited the session. As a matter of practice the Legislature limits the introduction-of-bills period to about six weeks after the beginning of the session. In other words, bills may only be introduced during the first six weeks or so of the session. That being so, and we have this great influx of bills with that limitation, how, then, do you reason that a special session of 90 days would have a tendency to limit the introduction of bills?

MR. HENDRICKSON: I don't think you can limit the number of bills to be introduced. I don't see any basis which would allow for that under the inherent rights that a legislator has. I am not thinking of it in numbers.

MR. LEWIS: In other words, you feel that psychologically it may have a tendency to restrict the introduction of bills.

MR. HENDRICKSON: Very definitely. I can tell you, Senator, that during my very long experience in the Senate I constantly used to raise Cain about the number of bills which were being offered, and yet I found myself one of the offenders. A group would come to me and say, "Senator, we want to get a bill in." We would look the bill over; it wasn't "too hot" but these people were your constituents—I don't mean to use those slang expressions, but they are more expressive—the people were your constituents, and so, rather than offend them, you put the bill in. How many of us have had that experience? Now, many of those bills that come to

the hands of members of the Legislature, bills which aren't particularly helpful to government—they are selfish interest bills—a great many of those bills come after the period that is fixed for introducing bills. I have seen them open up the time limit and wink at the time limit that they fixed on the introduction of bills, in order to get a few of these favored project bills in.

MR. LEWIS: Why not take a leaf from the early days of the Romans, when each legislator had to wear a rope around his neck? If his bill didn't pass, he was taken out in the courtyard and hanged. That may solve the problem.

(Laughter)

MR. HENDRICKSON: Well, I don't know. Rome slipped along the way somewhere. I think we had better stick to New Jersey.

CHAIRMAN: I hope you would never put the Democrats at the mercy of the Republican caucus like that.

(Laughter)

May I ask one question, Mr. Hendrickson?

MR. HENDRICKSON: Yes indeed, Mr. Chairman.

CHAIRMAN: If your suggestion of a biennial session were adopted, I assume it would carry with it the necessity of passing an appropriation bill for a two-year period, rather than for a one-year period. Do you think that would be advisable?

MR. HENDRICKSON: That is the most difficult part about the whole biennial session proposal. That is the one feature which, in my judgment, makes it questionable. In all states where they have biennial sessions they have some trouble—not too much, but some trouble on their biennial appropriations, as they call them. I have had a lot of close contact with a former Speaker of the House in Pennsylvania and some of the legislators across the river from our part of the State, and I know that they have a little technical difficulty sometimes with their biennial appropriations, but it isn't anything. If you believe in the principle, the whole principle of biennial sessions, I don't think the biennial appropriation is anything really to fear. It is going to cause you a little embarrassment here and there.

CHAIRMAN: It would have caused a great deal of embarrassment at this session of the Legislature if we had to appropriate for two years.

MR. CAVICCHIA: Mr. Hendrickson, getting back to lobbying, of course we all agree that it would be very difficult to write a definition of lobbying. But if we consider lobbying to be the over-running of the floor by outsiders or non-members, isn't it true that the Speaker and the President of the Senate, if they be strong presiding officers, can eliminate lobbying?

MR. HENDRICKSON: That is definitely true.

MRS. SANFORD: The right sergeant-at-arms.

MR. HENDRICKSON: But I like to give a fellow who is strong and courageous something to back him up, and then you are sure.

CHAIRMAN: Give him the Constitution to back him up.

MR. HENDRICKSON: Right. You don't have to legislate in your Constitution on lobbying. You merely recognize it as something that is to be treated with, and tell your legislators that this is something to treat with.

MR. LANCE: I have no vested interest in this question, because I am not a member of the Legislature. However, don't you think that if legislators were ineligible for appointment to any state office during the term for which they were elected and one year thereafter, many competent men might not seek the Legislature?

MR. HENDRICKSON: No, Judge, I don't feel that way at all. If a man seeks the honor of serving his county in the Legislature for some ulterior purpose like that, the Legislature is better off without him. I admit very frankly that after you are there awhile and labor a long while and give a lot of your time unselfishly, that some of these appointments look pretty nice. I am not criticizing anybody who has ever taken an appointment following his service in the Legislature, because we have had some marvelous appointments, marvelous public servants who have come out of the Legislature. But a man seeking office to represent the people should have a sincere attitude. If he conforms to that, he should be re-elected. I admit that is an idealistic point of view.

MR. LANCE: I will agree that a man should not use either House of the Legislature as a stepping stone to a state appointment. However, men of competence might hesitate to run for the Senate if they knew that they were going to be barred for a period of four years, which is your recommended term for Senators, plus one year thereafter, making a total of five years in all.

CHAIRMAN: Any further questions?

MR. CHRISTIAN J. JORGENSEN: With respect to your comment on biennial sessions, I would like to know if there is any reason other than the fact that we have too many laws, allegedly, that you are in favor of biennial sessions.

MR. HENDRICKSON: That I am afraid, did you say?

MR. JORGENSEN: In favor of.

MR. HENDRICKSON: The fact that we have too many laws, plus the fact that in most states they have done very well with biennial sessions.

MR. JORGENSEN: Isn't it true that New York and Massachusetts are two of the outstanding states as far as progress is concerned in this country? They do not have biennial sessions.

MR. HENDRICKSON: Well, you remember that in my formal

remarks I said very specifically that I personally had a leaning toward the annual session, but my association with other legislators from other states convinces me that by and large the biennial session is a sound thing. I agree with your remarks with respect to Massachusetts.

MR. JORGENSEN: What I mean to say is that in each state the biennial session, in your opinion, would be a godsend because the legislature would not be in session so often. Of course, if you want to follow that out to its more or less logical conclusion, we might as well abolish the Legislature. We will have no laws and, therefore, we can't have so many, and the result is that we will have a real godsend.

MR. HENDRICKSON: I don't agree with you at all, sir—not with that remark.

MR. JORGENSEN: I would like to have an expression of opinion from you; your own, if you don't want to give the opinion of a group. You are giving your opinion here in one shade to the extent that you are partial to annual sessions, and you say that as a result of your experience with out-of-state legislators you are partial to the other—

MR. HENDRICKSON: I will answer that question very quickly. My partiality to an annual session is based purely on tradition. I am as old-fashioned as can be, and it just hurts me to move away from any of these traditional things. It has been one of my problems as a public servant to get away from conservative, traditional thinking, and I have had to do it. We all have to do it, but because of the fact that New Jersey has always had annual sessions—of course, we have had this, that, or the other thing—traditionally, I sort of always will lean to those traditional things. That isn't always sound, either.

MR. JORGENSEN: Notwithstanding whether or not it is always sound, don't you nevertheless feel that it brings you a little closer to the feeling of the people whom you are in there to represent—that you are in a better position over the intervening period of months to acclimate yourself to what is going on outside of the legislative chambers insofar as your constituents are concerned?

MR. HENDRICKSON: I don't think a good legislator ever gets away from his constituents.

MR. JORGENSEN: They try to.

MR. HENDRICKSON: Unsuccessfully sometimes, perhaps.

MR. JORGENSEN: I would like to ask you one other question. You did not say anything about this, but I would like to have an expression of opinion from you on it. Do you feel that the Constitution should protect the sovereign right of the people insofar as initiative and referendum are concerned?

MR. HENDRICKSON: With respect to what feature?

MR. JORGENSEN: Well, in the usual contemplation of initiative and referendum: first, with respect to the initiation of laws, and second, with respect to the submission of legislation to referendum.

MR. HENDRICKSON: I think they should have the same right of referendum they now have.

MR. JORGENSEN: We do not have it in the present Constitution.

MR. HENDRICKSON: You have certain forms of referendum. You have referendum with respect to your public debt.

MR. JORGENSEN: That initiates from the Legislature, but I mean legislation that initiates from the people themselves.

MR. HENDRICKSON: I believe your provision with respect to your public debt initiates from the Constitution itself.

MR. JORGENSEN: That is true, but what I mean to say is, for instance, here is a group of citizens wanting to have a certain bill passed. Suppose, for various political reasons, the members of the Legislature did not feel that it would be a good thing?

MR. HENDRICKSON: You mean they want to duck the issue?

MR. JORGENSEN: That's it, exactly.

MR. HENDRICKSON: No, I am against that.

MR. JORGENSEN: Do you feel that the people should have the right to initiate that and bring it before the voters to see—

MR. HENDRICKSON: No. I am against anything that causes people to duck an issue, and that's what that would do time and time again.

MR. JORGENSEN: That's ethereal, Senator. The truth is that they do duck certain issues.

MR. HENDRICKSON: Sure, but why encourage it?

MR. JORGENSEN: Don't you think that you would not encourage it if you had it submitted to the people, if they had the right to initiate it as a law?

MR. HENDRICKSON: You would have an awful lot of referenda, I think. I have been tempted many times, I know. I know what lies back of a lot of this thinking.

MR. LEONARD: Just one last question. I have before me a pamphlet on the Legislature prepared by William Miller—I think you are familiar with the individual—distributed to each member of the Convention at the opening thereof.¹ I will read this paragraph:

“The majority of political scientists today see little advantage in the biennial session and advocate return to the annual unlimited session. They argue that problems of state are not limited to alternate years, and that less time devoted to problems of legislation will result in poorer legislation—legislation which is hastily conceived and ill-considered. They

¹ The Miller monograph, “The Legislature: Qualifications, Term and Compensation of Legislators; Sessions, Organization and Procedure,” which appears in Volume II.

maintain that the biennial session encourages the expansion of executive power at the expense of the legislative branch."

Do you agree with that philosophy?

MR. HENDRICKSON: Didn't he say scientists in the art of government?

MR. LEONARD: Yes.

MR. HENDRICKSON: No, I don't agree with the scientists.

MR. LEWIS: Mr. Hendrickson, you have avoided touching a particular subject before this Committee with which you are quite familiar from a state point of view, and I would like to get your thought on this question. Should the proposed Constitution make any reference to gambling and, if so, what in your opinion should it provide?

MR. HENDRICKSON: I will treat that very quickly. I don't think it is a subject for constitutional treatment at all.

MR. LEWIS: Thank you.

MR. HENDRICKSON: Mr. Chairman, before I conclude, I refer to the fact that I am appearing here partly as a result of your invitation, partly at the request of the Committee for Constitutional Revision. I want it to go into the record that that committee is composed of the following organizations:

- New Jersey State Federation of Labor
- New Jersey State Federation of Women's Clubs
- New Jersey Association of Real Estate Boards
- New Jersey Taxpayers' Association
- National Council of Jewish Women
- Consumers' League of New Jersey
- American Association of University Women
- New Jersey State Federation of Colored Women's Clubs
- New Jersey League of Women Shoppers
- New Jersey League of Women Voters
- Congress of Industrial Organizations (C.I.O.)

Those are the organizations represented by the Committee for Constitutional Revision.

CHAIRMAN: Thank you very much, Senator Hendrickson. It has been a great pleasure to hear from you, and your observations have been a great help to the Committee.

I want to say for the record that Mr. James Kerney was also to appear today. We have been advised by letter this morning that he cannot appear because of an engagement elsewhere, but that you would represent his views as well as your own.

MR. HENDRICKSON: I think, in general, I would probably represent his views. However, looking over this pamphlet prepared by that committee I note that, in several instances, I disagree. I will leave this pamphlet with the Committee, and you can make your own conclusion as to those points in which I was in disagree-

ment. The disagreement in any instance was not serious. I think that fundamentally and basically we are all agreed on the main issues.²

MRS. MYRA C. HACKER: May I just say that as far as the Federation of Women's Clubs goes, we have not endorsed that platform?

(Recess for luncheon at 12:30 P. M.)

²The pertinent section of the pamphlet, "Constitutional Changes Recommended by New Jersey Committee for Constitutional Revision" appears in the Appendix to these Committee Proceedings.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 8, 1947

(Afternoon session)

(The session began at 2:40 P. M.)

PRESENT: Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Morrissey, O'Mara, Proctor and Sanford.

Chairman Edward J. O'Mara presided.

MR. EDWARD J. O'MARA, CHAIRMAN: We will now hear from Mr. Irving Leuchter.

MR. IRVING LEUCHTER: I am here today representing the CIO from Union County, and the purpose of my appearance here is first to secure a Legislature which will be effective and responsible. In order to secure this structure the first requirement is that the position be invested with sufficient dignity to attract our most able and civic-minded citizens to service. This requires: (1) adequate term, and (2) adequate compensation.

In regard to term, we believe that an adequate term is two years for Assemblymen and four years for Senators. These terms are sufficiently long to avoid constant immersion in political election battles and yet not too long to negate responsibility and accountability to the people. And the elections should be held in odd years to separate them from national politics.

As to compensation, an adequate compensation can only be adjudged from time to time according to prevailing economic conditions. The Constitution is not the place to specify the amount of compensation. It is a legislative matter, with the limitation that no Legislature be permitted to raise its own salary.

We advocate certain changes which we believe will result in both efficient and responsible legislative action:

One, investigatory power: Despite the scandalous and shameful performance of the Congressional Un-American Committee, we still believe that every legislature must have full power to conduct investigations with respect to matters within the legislative competence. To insure, however, that legislative investigations do not become witch hunts, we think that the provision giving this power to the Legislature should also require: (1) that each investigation be empowered by legislative resolution; (2) that the resolution state in specific terms the frame of reference of the investigation;

(3) that investigations are authorized only to develop facts for specified legislative purposes or to throw light upon the operations of specified state departments or bureaus in connection with specified matters; (4) that individuals be entitled to representation by counsel in the course of testimony before a legislative committee; and (5) that where any witness testifies as to the aims, purposes, general reputation, integrity and method of operation of any organization or individual, the witness be subject to cross-examination by counsel for such organization or individual, and such organization or individual be given opportunity to testify in rebuttal.

Two, suspension of rules: The practice of rushing bills into law at the closing moments of the Legislature, without adequate publicity and opportunity for objectors to voice their objection—on occasion with the legislators themselves not having seen a printed copy of the bill, but merely having been informed of the general purport of the law—is obviously one which does not lend dignity to the legislative process, is one which subverts American concepts of democracy, and should be forbidden.

We recommend that the Constitution require that all legislation be in printed form on the desks of the legislators for a least three days prior to its enactment into law, unless the Governor certifies to an emergency, in which case it need be in printed form on the desks of the Legislature only before enactment. The nature of the emergency should be defined as one affecting the health and safety of the community, in order to avoid gubernatorial abuse of the proviso such as has occurred in some states.

Three, legislative council: The council we conceive of is not one confined to an examination of the existing body of law to disclose duplications, contradictions or inconsistencies and to recommend remedial legislation, nor one confined to observing the administration of justice and recommending remedial legislation for inadequacies disclosed. Those functions, we think, properly belong to a judicial council. We believe there is a great need for a permanent council whose jurisdiction will be to keep the developing social and economic conditions of the State under constant observation, to receive proposals from citizens and organizations with respect to legislation which the proposers deem desirable, to hold hearings where the council deems the matter sufficiently important, to research upon the request of the Governor or legislators and thus to develop information which will be available to the Governor and the Legislature in framing a legislative program responsive to the needs of the State.

Four, independent political parties: The course of American history demonstrates that the independent political party is a catalytic agent in the stream of American democracy. New ideas and con-

cepts, which have eventually been adopted and accepted by the whole nation, have with some exceptions (Wilson and Roosevelt) been introduced and spread by independent parties. Accordingly, such parties should be given the fullest reign, and not so restricted that lip service only is paid to their right to exist and function. Such undue restrictions are present in laws which prevent such independent parties from nominating a candidate who is also the nominee of another party. The Constitution should specifically provide that the Legislature may enact no law which prohibits a candidate from standing for election as the candidate of more than one political party.

Five, Assembly districts: We do not believe that it can seriously be disputed that the election of Assemblymen from counties as a whole runs counter to almost universally accepted concepts of American democracy. It deprives large masses of people, at times approaching 50 percent of the entire county vote, rarely below one-third of the county vote, of representation by legislators of their own political persuasion or choice.

We urge that the Constitution permit the Legislature to divide the counties into Assembly districts. Article II, paragraph 1, providing that every voter shall be entitled to vote "for all officers" that are "elective by the people"; Article III, Section 3, providing that "the General Assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among said counties as nearly as may be according to the number of their inhabitants"; and Article IV, Section 1, paragraph 2, providing that a Senator must be resident "of the county for which he shall be chosen," are now read together to reveal an intent to bar districting. We suggest the addition of a new provision to read:

"When any county is entitled to more than one member of the Assembly, the Legislature may divide the county into districts of compact and contiguous territory, as nearly equal in population as may be, in each of which a member of the Assembly shall be elected; and the Legislature shall examine the districting at least once each ten years upon publication of the United States census, and at such other times as it may deem necessary, and make whatever changes are necessary to keep the districts compact, contiguous, and as nearly equal in population as may be."

CHAIRMAN: Are there any questions?

MR. WESLEY L. LANCE: Is there anything in our present Constitution which prevents legislation authorizing a man to run on both tickets?

MR. LEUCHTER: No, there is not; but I would like to have put in a prohibition from preventing the legislation.

CHAIRMAN: Thank you, Mr. Leuchter.

Ladies and gentlemen, I announce that there are eight speakers listed, and it is now quarter after three. While we do not like to

impose any restrictions arbitrarily on the speakers, nevertheless it is necessary that the Committee get along with its work. We are going to ask each speaker to please confine himself to not more than ten minutes and to submit any memorandum which he desires to submit in support of his position.

Will you call the next speaker please, Mr. Secretary?

MR. LEON LEONARD: Reverend Edward Lute.

REVEREND EDWARD LUTE: Mr. Chairman, honorable delegates, friends:

I have been very much impressed with all that I have heard.

CHAIRMAN: Whom do you represent?

REV. LUTE: I am minister of the First Methodist Church, Union City, New Jersey, one of the member churches of the Hudson Methodist Parish.

I have been very much impressed, Mr. Chairman, with all that I have heard and now with what I see of the way in which this hearing is being conducted. It seems to me to speak well of the strength and health of our democratic institutions in this State, that a full and fair and frank hearing is given to all the various opinions that can be held on this very difficult issue of the gambling laws.

One suggestion has been made in the public press which I would like to call attention to here and to endorse and to ask you to consider. That suggestion was that further public hearings should be held on this issue throughout the extent of the State. The specific suggestion which was made in the press and supported by other groups was that public hearings on this issue of gambling should be held specifically in the cities of Paterson, Jersey City and Newark. I would like, on behalf of the Hudson Methodist Parish, to suggest also the necessity of extending the discussion of this difficult issue of gambling even further throughout the State. It seems to me that we need representations from not only the large urban centers but also from the suburban and rural sections of the State. Specifically, then, I would like to suggest that public hearings should also be held in, for example, Princeton, Morristown, Hackettstown.

It seems to me that we all agree that the public mind is exercised to a great degree on this question of gambling. It was thought necessary at one time to write this problem of gambling into the State Constitution. It seems now that efforts are being made to legalize the whole practice and, in a sense, profession of gambling. It is for that reason that I wish to suggest on behalf of the organization that I represent here that the widest possible hearings should be held with reference to this question. It seems to me that with reference to gambling, there are two attitudes that can be held.

MR. LEONARD: Reverend, may I interrupt just to place this in the record? I think it is the time to put it in the record that our

Chairman, Mr. O'Mara, at the very beginning of our committee work announced and gave to the press that this Committee either in its entirety or in sub-committees would be very glad to go to any part of the State for the purpose of public hearings, if there were requests for them. Up to the present time, I don't believe that we have had any requests for any hearings in any other portion of the State except New Brunswick. I believe your request is the first. I merely want to put that in the record of this hearing.

REV. LUTE: Thank you very much.

I wish to suggest there are two attitudes with which we might come to a hearing of this kind on the question of gambling. There is the attitude of those who have a general interest in the problem, and the attitude of those who have a particular, we might say a vested interest, in the question of gambling. I have not heard that there has been any voice here supporting the extension of commercial gambling. We have not heard from those who might wish to extend and legalize the whole gamut of the gambling trade, as we might say. There are those, however, who do have a particular interest, a vested interest if you like, in gambling.

I represent a group, if you like, a church, which has only a general interest in this question. We do not, as a matter of policy, make use of the proceeds of any gambling enterprises in the support and extension of our work. It may well be, therefore, that the chief problem that we are confronted with here in the discussion of gambling is, indeed, this question of the practice, the legalization of gambling for charitable purposes.

What I wish to say is simply this: I recognize that the voices we hear in favor of gambling in this hearing are the voices of representatives of very worthy organizations, organizations patriotic, religious, concerned about the public welfare, community enterprises, social welfare. We assume that they are concerned with gambling as a possible means of supporting these worthy enterprises. It seems to some of us that it is anomalous to introduce the practice, encourage the practice, of gambling for what is recognized as worthy, patriotic or religious purposes. It seems to me and many others that it is an effort to do wrong for the purpose of good; for the end which is recognized as good, a means is used which cannot contribute to the public welfare. I simply wish in a moment or two of your time to state a conviction and to support with one more voice the other voices that have been heard here opposed to gambling.

It seems to me that gambling encourages the cupidity of those who operate the gambling. It encourages the stupidity of those who, if you like, are operated on in gambling. It seems to me, therefore, that it is tragic for organizations who are concerned with

the public welfare, with community and social welfare, to offer the lure of easy money to people, many of whom are not in the best of circumstances.

It is not, in any sense, as one of the antiquated blue-law advocates that I speak on the question of gambling. You may assume that I am opposed to gambling in all its forms. This is not because I am opposed to games and amusements. I am opposed to the perversion of a perfectly natural and innocent instinct for play by its deliberate organization in the direction of the seeking of unmerited gain. I do not feel, therefore, and I sum up in that word, that the purpose for which gambling is carried on has anything at all to do with the character of gambling as an evil influence in the community.

The question has been raised before, I believe, in this Committee as to whether it is the business of the Constitution to deal with such a question as gambling. One witness in testimony this morning suggested that it was not. I would simply like to suggest that a Constitution is an instrument for the protection of the people. It therefore should include anything which is necessary for the protection of the people.

The experience of this State in the past shows that an injunction against gambling is necessary. I would submit, therefore, that that injunction should be maintained in the Constitution of the State.

CHAIRMAN: Are there any questions any of the Committee would like to ask Dr. Lute?

MR. CHRISTIAN J. JORGENSEN: I would like to ask one question. Would you tell me how you feel that prohibition in the Constitution gives you any better protection, or the people any better protection, against gambling than do the present gambling laws upon our statute books?

REV. LUTE: I would agree with you, sir, that you cannot legislate good behavior by constitutional amendments. It seems to me, however, that the State, in its constitutional provisions, should be concerned with the whole welfare of the people; that certainly before the Constitution is amended, the whole matter of the effect of gambling should be thoroughly discussed and a decision made in this Committee that the law as it stands, the Constitution as it stands, be maintained.

MR. JORGENSEN: If such meetings were conducted throughout the State and the proponents and the opponents were given voice all over the State, and if it turned out that the advocates for abolition of gambling in the Constitution heavily outweighed the advocates of retention of absolute gambling prohibitions, would that change your mind as to the subject matter?

REV. LUTE: I would say this, as I tried to say in my statement

of a moment ago—the communion of which I am a member does not refuse to make use of gambling practices because it is against the law; it does so because it is against what we believe is a deeper, moral law. We believe that gambling is a practice which is destructive of the best elements in personal and communal development. Now, if the majority of the people feel that gambling is legitimate, it does not affect our particular viewpoint. I think I may say that.

MR. JORGENSEN: That being the case, don't you think that the fairest method of leaving the matter up to the people would be to leave it up to their chosen representatives in the Legislature, as being the best means of reflecting the opinions of the people throughout the State?

REV. LUTE: I believe that certainly the representatives in the Legislature should have the deciding voice. However, I do not think that it is, for that reason, an issue that can be altogether avoided in this Committee.

CHAIRMAN: Any further questions? . . . Thank you very much, Doctor.

MR. LEONARD: Mr. Devlin.

JAMES E. DEVLIN, JR.: I represent the Union County Chapter of Holy Name Society, the Union County Federation of Holy Name Societies, and the Union County Chapter of Catholic War Veterans.

My topic is the same as the gentleman who preceded me—the gambling statement in our Constitution—and I would like first of all to point out that the question has been raised several times as to whether or not gambling—the prohibiting of it or the allowing of it—has any place in the Constitution. I think that the very fact that the present Constitution mentions or prohibits gambling makes it a question that this Committee and this Convention should take up.

The gentleman who preceded me spoke about gambling and about allowing the whole practice and profession of gambling. Those of us who are in favor of legalizing gambling have no intention whatever of legalizing professional gambling. The gentleman from the Elks, who spoke before I did, mentioned the fact that we would like to restrict it to churches, veterans' organizations, fraternal organizations and charitable institutions. We also would like to propose that it should be very carefully supervised. Our argument for gambling is simply this—There is nothing morally wrong with gambling. We will presume, for a moment at least, that all of us here believe in a Supreme Creator, in a God. Now, if we believe that there is a God and that that God is just, I think we must admit that he wouldn't instill in us any instinct that was bad. By that I mean this—everyone has the instinct, or rather,

everyone likes to gamble. That is practically inborn in everyone. We do it all the time. Life is a gamble, they say. We gamble every time we get up in the morning, every time we cross the street, and then to come to the practical thing at home, we go to bingos and we take chances on automobiles. That's almost natural for everyone. So I still insist that morally there is nothing wrong with gambling, any more than there is anything morally wrong with drinking. It's the abuse of drinking or the abuse of gambling that is morally wrong. If you have a dollar or two dollars or fifty dollars that you can afford to spend on recreation, I see nothing morally wrong in spending it for drinking or gambling or dancing or buying automobiles or whatever you feel you would like to do.

The Constitution as it stands now, I am sure you will all agree, has a definite Colonial influence. The law prohibited gambling in that Constitution in 1800. We're living in a different age now; everyone doesn't think the way the people of 1800 thought. We definitely feel that because of the Colonial influence that any law against gambling now is unfair; you're hampering people, you're denying people something that they want. If we allow pari-mutuels, certainly then you'll agree the legislators didn't think there was anything wrong with gambling when they allowed horse-racing.

Therefore, what we do propose is this—that gambling be allowed, as I said before, for charitable institutions, veterans' organizations, churches, fraternal organizations; and that gambling be very carefully supervised to keep out professional gamblers and racketeers.

CHAIRMAN: Any questions of Mr. Devlin? . . . Thank you very much, Mr. Devlin.

MR. LEONARD: Reverend Peterson.

REVEREND ARTHUR LAROY PETERSON: I am pastor of the Linden Avenue Methodist Church in Jersey City, also a member of the Hudson Methodist Parish . . . Honorable Mr. O'Mara and members of this Committee:

I want to endorse most heartily the arguments set forth by Dr. Green in his original presentation, and the additional testimony he will present today. I deem it unnecessary for me to repeat what he has so clearly stated.

At an early age I came to some convictions. These convictions came to me as a result of certain so-called innocent pastimes which I saw and from which I suffered. The passing years have only served to confirm my early impressions. Now in my adult years, as an active pastor dealing with people and their many problems, consulting with them, having them open their hearts to pour out their hopes and fears, having them seek guidance, sometimes for themselves but more often about an erring one, I am more confirmed than ever in my convictions. One of these is that gambling

is morally character-weakening, spiritually harmful, emotionally upsetting and economically a fallacy.

Gambling enters into many of these situations—often only petty gambling, gambling seemingly so innocent, providing a little diversion for the moment, testing one's luck and the power of guessing. Therein lies the danger—fascinating on the one side, the challenge of a sporting proposition on the other. Said a baker salesman to me not long ago: "Years ago I was lucky at a wheel of chance conducted by a charity organization. To my young mind, that was a windfall that suggested 'easy money'—things I could not otherwise afford. I soon learned differently, but I had been inoculated with an idea. Now I know I cannot win, but in spite of this and my resolutions otherwise, I find it next to impossible not to take a chance just this once. Just a little—one little sum added to another little becomes a sum I cannot really afford."

That man lost a good job on this account.

A man making good money sought a loan of \$15 until payday. His excuse—his wife had played some sort of substitute for bingo and the chance wheels at a carnival. Of course she should have known better; and yet, wasn't she helping in a good cause? Excusing her foolishness with the cloak of charity . . .

If we legalize gambling for any reason, we are saying to the boys and girls, our future citizens: "The State, which is your protector, thinks this is perfectly correct, and in doing this you will be doing a good turn by contributing to religion and charity and, by the way, maybe helping yourself a little bit." But if that seed comes to fruition in vice, that same State will say, "You ought to have known better."

Really, who is to blame—the State that puts its O.K. on the proposition by giving permission in the first place, or the person who follows the logical course of his nature to practice what he learned in the name of religion and charity, when and where he can?

As a native of the State of New Jersey, I consider myself fortunate in having been given every incentive to good citizenship by our government. I have since made a few exceptions. To be guilty of hurting oneself and sometimes others is not good. To have the sanction and encouragement of the law to do this is, to say the least, most unfortunate. The law functions for my benefit. To remove from the inexperienced, the foolish and the weak the dangers and pitfalls to good citizenship is a part of the State's function. Gambling does no good, and many of us hold it is a positive danger. We cannot legislate people into being good, but we can remove some of the dangers. We do not leave poison within the reach of children. Let us remove this poison that can have a devastating effect on

family and personal happiness and the character of its unsuspecting victim.

And this added word. Our good friend is concerned about the crippled children and their adequate care, and he is rightly so. But gentlemen, I am more concerned about the crippling of the emotional and mental parts of those children and young people, in keeping them or helping them to grow in the proper and healthy manner into better citizens than we are.

CHAIRMAN: Are there any questions of Dr. Peterson? . . . Thank you very much, Doctor.

MR. LEONARD: William J. McKinley.

CHAIRMAN: I think he went with the veterans over to the other Committee, the Committee on Rights and Privileges.

MR. LEONARD: Lawrence A. Dwyer.

MR. LAWRENCE A. DWYER: I speak as an individual and private citizen. I will try to confine my remarks to the ten minutes that have been allotted to each speaker . . . Mr. Chairman, ladies and gentlemen:

The whole question of the topic of gambling today seems to be whether it is intrinsically evil or not, and if you start off with the premise that gambling *per se* is intrinsically evil, you are bound to wind up with the conclusion that gambling is evil and wrong. However, just as you have with lobbying (lobbying *per se* as explained this morning by Senator Hendrickson, and the abuse of lobbying is the wrong), so too with gambling—you can have it, *per se* it is not wrong, but the abuse of it can be wrong. Therefore, there must be two schools of thought in the matter, and I beg of you to have an open mind.

Gambling to me, in one definition, could be the playing, as a pastime for stakes, the stakes being in proportion to the amount you expended on the game of chance. Then there is the other school that says gambling taps at the resources of a family and weakens its moral fibre. That is intrinsically wrong, and I agree with the opposition.

So that you have two schools of thought in the matter, and they both bear development. To start with—on the intrinsically wrong—I appreciate the fact that in many cases of professional gambling or even where you have a bingo player who steps out of bounds, you have them tapping at the resources of the family and carrying on to an exaggerated extent where it does a great deal of harm. I am also mindful of the fact that that type of gambling which embraces trickery and fraud ought also to have our condemnation.

Then there is the other type which I champion here today, and that is the gambling as a pastime for a worthwhile cause. Can you visualize with me a man or woman going to a church hall or to a

fraternal organization or to a veterans' organization and there, in a dignified atmosphere such as these classifications would embrace, putting a certain amount of money, a reasonable amount of money, in an evening, for stakes commensurate with the amount of money that is being expended for that worthwhile cause? I cannot see anything that is weakening the moral fibre of that man or woman. I cannot see where it is upsetting them morally. I cannot see where there is a lure of easy money that is being developed in their appetites. I cannot see an intrinsic personal development, or a cheap way of living, or an open sesame for golden opportunities that they never thought of before because they now realize that perhaps they will not work hereafter by the sweat of their brow.

I take into consideration the pastime and I also take into consideration the worthy cause. As in everything else, there are those who will step out of bounds. You get them in all schemes of life, in all plans or progress. Once in a while there will be one who will expend more than he should. Why condemn the idea of the legalization of gambling because of just one or two?

I don't think that any of us should come here today and develop the thought embracing a topic such as this without also contributing something to the Committee. We have the idea of checks and balances in our United States Constitution, and I am aware of the fact that we have something of it in our New Jersey Constitution. Certainly this idea of legalized gambling should have some checks and balances on it too. We have our A.B.C. control for the sale of alcoholic beverages and liquors. We have the Boxing Commission to oversee boxing.

I offer this suggestion to the Committee at large—that we formulate and establish a committee known as a committee on legalized gambling, to oversee at all times this most vital topic as it stands before us today. What would be the duties of this committee? Well, I dare say that they would have the authorization of certain police powers within themselves, an intrinsic power; that they could send out their investigators and investigate these functions, whether they be church or whether they be for the veteran or for a charitable or fraternal institution, or whatever it may be; that they lay down the mandate as to what regulations shall be established; that they investigate those who are promoting—and by that I mean, in the example of a carnival, those who set up the machinery with which the institution works; that they investigate how much of the return this promoter is going to get; that they investigate the promoter himself; that they make laws forbidding children to attend bingos and these legalized games of chance that have been often mentioned here today; that they investigate the institution for which the work is being carried on.

I think with those police powers and an open and ready mind, we can really see and visualize where there would not be this weakening of the moral fibre or this conviction on the part of so many that gambling is intrinsically wrong. It is a pastime in which many have participated—many of my closest friends, whose friendship I revere and cherish. With an open mind I have analyzed them and I cannot see any foundation for any suspicion that their moral fibre has been weakened, or that they have aroused unnatural appetites to get rich quick, or that they have bought or attempted to buy the Brooklyn Bridge with the dollar or two expended at a bingo or carnival. I realize, too, that the black eye that gambling got in our State was caused by the scandals attached to the Guttenberg Race Track, and that our legislators back in 1897 took it upon themselves to do something which to us at this present time seems to be a little drastic when we take into consideration the modified gambling and legalized gambling that can be carried on for noble causes where it is being carried on really as a pastime.

I think that we can undo some of our laws that are on the statute books. I think it's a compromise suggestion on my part that we have this control board set up.

Ladies and gentlemen, in conclusion, I am in favor of legalized gambling, and I hope that it will be one of the provisions in the new Constitution.

CHAIRMAN: Any questions of Mr. Dwyer? . . . Thank you very much Mr. Dwyer.

MR. LEONARD: Reverend Harland T. Gant.

REVEREND HARLAND T. GANT: Harland T. Gant, pastor of the Methodist Church in New Brunswick and representing the New Brunswick Council of Churches, as well as a member of the New Jersey Conference of the Methodist Church.

One thing that has been emphasized here today in gambling was the fact that churches wanted it. I am going to state two positions from church groups, and my personal position. The record of our New Jersey Conference, as found on page 440 of the 1946 Year Book, has this resolution which was presented and adopted:

"WHEREAS, gambling is a moral disease which rots character and strikes at the vitals of a nation, and is really a virus, producing neurotic conditions nearly impossible of cure; and

WHEREAS, race track gambling in the State of New Jersey is multiplying this evil among us, causing broken homes, lost savings, hungry children, unpaid bills, industrial inefficiency, losses in legitimate business, a loosening of moral standards, an influx of undesirable persons, an increase of crime; undermining the virtues of thrift, industry, good sportsmanship, and civic honor, promoting greed, improvidence, shiftlessness and political corruption; now therefore be it

RESOLVED, that members of all our churches be urged to keep their hands free from any form of this evil; that they not only refrain from attendance at race tracks, but abstain also from any form of polite gam-

bling such as bingo, raffle tickets, door prizes, blanket clubs, etc.; and be it further

RESOLVED, that the members of this Conference organize in their individual communities, action groups to carry on a campaign for the repeal of the race track amendment; and be it further

RESOLVED, that a home-to-home canvass be inaugurated in order to ascertain the sentiment of their community, and a petition be addressed to their Senator and Assemblyman asking that a concurrent resolution be adopted by the Legislature of New Jersey to amend the Constitution of this State to prohibit all gambling; and be it further

RESOLVED, that an advisory committee be appointed by the Bishop and Superintendents to aid in creating and cooperating with a state-wide campaign for such an amendment; and be it further

RESOLVED, that copies of this resolution be sent to the Governor, to the members of the Legislature, to each charge lay leader and minister, and that each district superintendent be instructed to bring this entire matter to the attention of each Quarterly Conference."

That resolution, when presented before our Conference session, was signed by S. R. Leap, Judge from Salem County, and E. W. Palmer, pastor of one of the largest churches in the Conference—First Church, Asbury Park.

The New Jersey Conference of the Methodist Church comprises that part of New Jersey lying south of the Raritan River. Its membership numbers 90,000. There are a lot of votes involved through such an organization.

Then I speak for the New Brunswick City Council of Churches, comprising 26 Protestant churches in this area. It has issued a clear-cut statement against gambling of any kind. We feel that the church has a high enough ideal and has the favor of the people enough not to have to stoop to that which is illegal and questionable for its support. I am strongly in favor of a "no gambling law" being written into the Constitution of our State. We have a State to be proud of. Let us not cloud its good name. Thank you.

CHAIRMAN: Any questions?

MR. DOMINIC A. CAVICCHIA: Yes, I would like that last sentence clarified. I would like it explained. Would you have nothing in the Constitution about gambling, or would you have a positive restriction against gambling?

REV. GANT: I would have a positive restriction, from my own personal conviction.

MR. CAVICCHIA: I didn't quite understand the last part.

CHAIRMAN: Thank you very much, Doctor.

MR. LEONARD: Reverend Harry L. Bowlby.

REVEREND HARRY L. BOWLBY: Mr. Chairman and members of the Committee:

I am Reverend Harry L. Bowlby of East Orange, New Jersey, General Secretary of the Lord's Day Alliance of the United States. As the agency of a score of evangelical denominational bodies, stretching throughout the entire nation, and representing fully twenty millions of communicant members—church members—and

an additional number of adherents, approximately ten million, we hereby make earnest and respectful request of you to keep fully intact that section of the present State Constitution which is of the pattern of the Constitution of the United States, Article I, Section VII, paragraph 2. This provision relates to Sunday and is pertinent to the fact that this institution is a civil institution entitled to the safeguards known as our "Sunday laws." The State and the nation are under bounden obligation to maintain the integrity of that institution and to protect it against the assaults of a brazen commercialism.

CHAIRMAN: Doctor, I don't like to interrupt you, but I think that that subject is not before this Committee for consideration. That belongs to the Rights and Privileges Committee.

MR. CAVICCHIA: What is the subject again, of the Constitution?

REV. BOWLBY: Yes, the Constitution of the United States and also this is probably in your own Constitution.

CHAIRMAN: What section of our State Constitution? Can you tell me?

REV. BOWLBY: I can't tell you, but I know that it is there. Have you got the Constitution right there?

CHAIRMAN: Well, what is the subject matter?

REV. BOWLBY: The subject is Sunday, and in the United States Constitution it is Article I, Section VII, paragraph 2.

CHAIRMAN: Well, it is not the Legislative Article of our Constitution. I am sorry, but it is not before us for consideration.

REV. BOWLBY: Then I'll move to the matter of gambling.

CHAIRMAN: Yes.

REV. BOWLBY: Now, we propose for your consideration, and we hope for your favorable action in a recommendation to the Constitutional Convention, that race-track privileges be definitely prohibited on Sunday and on other days of the week; likewise all other agencies or activities connected with that enterprise.

CHAIRMAN: Sundays and other days of the week?

REV. BOWLBY: Yes, sir.

CHAIRMAN: You would rather eliminate racing entirely.

REV. BOWLBY: Yes. We want to put the Sunday in to protect that clause against any infringement, which our present Constitution doesn't do. We also want it understood that we are against it definitely.

MR. LEONARD: As a matter of fact, the present legislation bars horse racing on Sunday.

MR. JORGENSEN: The Constitution does, too . . . Do I understand from your separating Sunday from the other days in the week, that you want it for every day but that you would settle for Sunday?

REV. BOWLBY: No, sir, I do not. We would not settle for Sunday or any other day. It's wrong. It's intrinsically and morally wrong.

MR. JORGENSEN: No, but I mean you said you especially wanted Sunday mentioned.

REV. BOWLBY: I wanted that mentioned because of this reason: There are certain institutions that come creeping into Sunday. Where other days are permitted, after a while they slip into Sunday. Take, for instance, the motion picture business, the sporting business, song business—it means every day in the week.

MR. JORGENSEN: Is that one of the intrinsic wrongs, too—Sunday moving pictures?

REV. BOWLBY: Did I say intrinsic wrong?

MR. JORGENSEN: You were mentioning a number of intrinsically wrong things that slip in as a result of loose legislation.

REV. BOWLBY: I would state very frankly to you, sir, that I consider that commercial movies are wrong on Sunday. Does that answer the question?

MR. JORGENSEN: Yes sir.

REV. BOWLBY: Now, going back to gambling, this is a business most offensive to multitudes in our State who feel that a serious mistake was made when the gambling, race-track venture became a part of the Constitution.

According to accounts in the daily press, a resolution has been urged by certain interested parties for the inclusion of a provision that would liberalize the gambling section of the basic law of the State to permit gambling for charitable purposes. We stoutly oppose any such attempt further to add to the craze of gambling, and persistently oppose the notion that "gambling is not inherently immoral."

So much is being said today about juvenile delinquency. It has been mounting steadily to a new high. Gambling at carnivals, bazaars, boardwalks and at social functions bearing the mark of religion or of a so-called patriotic complexion, cannot be conducive to curbing or conquering that illness which afflicts not only the adolescent age but reaches into the more mature years of life as well. To achieve good citizenship, genuine morality in the hand of a friendly religion is an imperative need today. Bingo games for gambling returns do not point the way to correct citizenship, nor do they encourage the tradition of reasonable thrift, so characteristic of our true American way of life.

It has been said here today that certain kinds of gambling for charitable and religious purposes is quite different from what you call the professional and the generally recognized commercial gambling. Now, Mr. Chairman and members of the Committee, it

seems to me that herein this nation—the United States Supreme Court on February 29, 1892, in a unanimous opinion handed down by Mr. Justice Brewer, who wrote the opinion for the court, said that the United States of America is a Christian nation. Now, if we are Christians, then we ought to stand by the Christian principles. Reference is made in the Holy Writ about gambling. Gambling went so far in that day—that was 19 centuries before, or just about the time Christianity was coming in—that the Master of Men and Saviour of the World said, “And for my raiment did they cast lots.” They gambled there while He was hanging on a cross—the cross of Calvary.

We are speaking about customs today, and it has been referred to here by someone about how far removed we are from the Gutenberg track. In 1897 gambling got so bad that the people outside of the churches as well as within rose up and said “This thing has to go.”

Now customs, we will admit, change; but fundamental principles do not change. There is a little jingle that has a lot of truth in it:

In vain we call all notions “fudge”
And bend our conscience to our dealing;
The Ten Commandments will not budge,
And stealing will continue stealing.

I don't care whether it is a bingo party, something else for charity or religion, or what. Many a young person may get his taste for it and his start there, leading him some day to gamble the shoes off of his children's feet and the roof from over their heads.

There are certain things, gentlemen, that belong in our American life that don't change. If you trace back the history of our country, the time when the Pilgrim fathers came over here, they came with a pact that, with a few over a hundred souls, dedicated this country to the two great propositions, as we call them, of the Sabbath and the censure in order that they might build here a republic which was based on the morality that would stand the test of time in the years to come.

I have here, which I took this morning from a book in the Princeton University Library, one of the great speeches of Woodrow Wilson—one of the greatest of Presidents that this country ever has produced or ever will produce, in my own opinion, at least—and what did he say here about college instruction in the school? He said: “A professor at Princeton could easily forget that they were training citizens as well as drilling pupils. Princeton must be a school of duty, and duty must rest on religion. There is nothing that gives such fit public service as religion.”

I submit to you that this nation was founded upon the very rock foundations of our Christian religion, and if we find there are

certain things here, Mr. Chairman and gentlemen, that would be directly opposed to the cultivation of the best citizenship of our State, then we are under obligation, God being our helper, to do our best to see that these obstructionist things should not be set up in the way of our children, or in the way of parents who may possibly do violence to their children by falling therein.

Just this word, and I finish. We entreat your thoughtful consideration and your favorable action to these requests that we are herein making of your honorable Committee.

MR. CHAIRMAN: Are there any questions of Dr. Bowlby? . . . Thank you very much Doctor. We appreciate your coming here.

MR. LEONARD: Frank Fahy.

CHAIRMAN: Mr. Fahy, you spoke before the Committee the other day. May we ask that you confine yourself to anything in addition to what you had to say at our last hearing?

MR. FRANCIS X. FAHY: All right, sir. I'll try . . . Mr. Chairman, ladies and gentlemen of the Committee:

On July 2 I enjoyed the privilege of addressing this Legislative Committee and apprising the members of my views, and the views of the organizations I represent, on the vital issue of gambling. I would like to indicate again at this time the organizations which I represent.

CHAIRMAN: You have already done that, Mr. Fahy. I don't think you have to do it again.

MR. FAHY: All right. I should like to add to that the fact that I am speaking today on behalf of the State Department of Catholic War Veterans of New Jersey, representing 185 posts. In advancing the proposition that will be made in the new Constitution for legalizing gambling, when sponsored and supervised by a responsible recognized organization, I attempted definitely to establish that gambling is not immoral. With that basic concept in mind a study of present anti-gambling laws reveals New Jersey in the unfavorable light of sustaining discriminatory, hypocritical legislation. I ask each of you, can there be any possible justification for permitting wagering within the limits and the confines of a race-track and yet legally branding a bridge game for one thousandth of a cent per point as an illegal operation, and branding the bridge players as law-breakers? New Jersey, while prohibiting bridge games in your own home, regards it as perfectly proper for 20,000 people to wager \$1,336,000 in a single day at a race-track.

CHAIRMAN: Mr. Fahy, I don't like to interrupt you, but if my memory serves me right, you covered that ground at our last hearing.

MR. FAHY: It is conceivable, Senator, that I did touch upon it, and if it is the wish of the Committee, I shall not make any further reference to it.

CHAIRMAN: You see, our time is limited. We have to get to the drafting of this Article, and while we are perfectly willing to sit as late as necessary, to have any thoughts that have not been proposed or to have different speakers propose the same thoughts if they want to do it, I don't think that we can serve any useful purpose by having the same speaker repeat the ground that he has already covered. I don't like to be discourteous, but—

MR. FAHY: I appreciate the problems of the Committee and I shall make no reference to what has previously been covered by me.

Senator O'Mara, as Chairman of this Committee you previously announced your willingness to conduct regional meetings of this Committee, if requested. I now petition you to arrange such hearings throughout the State, and, if possible, to schedule the initial one in Jersey City. The citizenry is deeply interested in the gambling problem, and every opportunity to voice their opinions should be accorded them. Our new Constitution must reflect the will of the people, and regional hearings will provide the medium for best appraising the sentiments of the people. May I respectfully urge that the Committee give every consideration to this appeal?

It has long been my contention that the average citizen is not aware of the full import of the present prohibition against gambling. So few realize that, as presently written, gambling and lottery in any form are illegal. For example, I doubt that they are all aware of the fact that the Women's Afternoon Club may not offer a door prize; no one may offer a Thanksgiving turkey raffle; the bridge club may not play for stakes, no matter how small; nor may the veterans' post which I represent replenish its welfare funds with the proceeds of a lottery on a car or a radio. I think it is of great importance that these facts be brought strongly home to the voters who must cast their ballots in determination of any new Constitution. To that end, the associated veterans' and fraternal groups whom I represent will sponsor public rallies at which the true discriminatory meaning of the present gambling clause will be exposed in detail.

Our people must be fully informed as to that section of the Constitution so that they will entertain no doubt that the racing amendment was adopted by the grace of their votes by 150,000 majority. It does not follow that this same majority, at least this same majority, will favor constitutional provisions that will entitle them to enjoy bingo and other harmless gambling. I believe that the public, fully alert to the real issue involved, will demand that the new Constitution grant them the right now denied. Now, with your permission, I would like to reiterate my plea for regional hearings that I have previously outlined. I would like to strongly state that our position

is that the provision for gambling must be contained within the Constitution, and we are unalterably opposed to any reference of it to the Legislature or to any separate referendum.

CHAIRMAN: Any questions? . . . Thank you Mr. Fahy.

MR. LANCE: I may have asked some other speaker this, but do you know of any state in the United States which says that the legislature must legalize gambling?

MR. FAHY: No, I know of no other state that says that.

MR. LANCE: Is that your position?

MR. FAHY: That is our position. That's correct.

MR. LEONARD: Reverend Green, who according to my list is the last speaker. If there are any others, they had better register.

CHAIRMAN: May I make the same admonition to you as I made to Mr. Fahy, that you confine yourself to matters that you did not cover in your last appearance before the Committee.

REVEREND MARVIN W. GREEN: Senator, I've cut my speech in half.

There is a very famous Roman Catholic philosopher who I think is one of the greatest philosophers the world has ever known, St. Thomas Aquinas. A teacher, in presenting him for an entire year in our university, was so successful that several of our Methodist ministers left school and joined the priesthood. One of St. Thomas' principles is one that he took from Aristotle—that you cannot evaluate any particular experience in life on the basis of the temporary position it occupies, but you must look backward to the past where it originated, you must look at it in the present for what it is, and you must look at it in the future for what it will be. For instance, a boy in St. Joseph's School—handsome, logical, oratorical ability—we might look at him and say there goes the Senator—

MR. LANCE: God forbid.

(Laughter)

REV. GREEN: Conversely, I knew a Senator Freeman in Washington whose wife took him to a doctor and the doctor said he was syncopated. She looked up in the dictionary to see what syncopation meant and the definition was that syncopation means "moving irregularly from bar to bar." This Senator in his present condition, inebriated so often, you can look at him and say, "There goes the Bowery bum," in the Thomistic definition of stating the case.

I think we need to say at the very outset that we do not question the good work, the charitable work, which any of our friends are doing. We do not want the newspapers to play this up as they did last week—as a Catholic-Methodist tilt, involving our emotional experiences. We are all agreed on the wonderful work that's going on, that it should continue to go on. We are only disagreed on how

funds are to be raised. I do not believe our friends have in any way today made any unique, original or specifically good contribution to the position which they have held.

I would like to just point out a few basic errors in their assumptions and call it a day for myself.

The speaker from the Elks this morning spoke of the fact that there is no one in this Committee, in this Convention, who hasn't done perhaps a little gambling in his life, saying, therefore, that a little gambling would be all right to continue then. I doubt if there is any member of this Convention or this Committee who hasn't done deliberately what his conscience or his better ideals have told him he should not do, but I can hardly see how that gives us an excuse for continuing or going on to do those things which we feel our conscience tells us are wrong for us to do.

Again, it seems to me the prohibitions against gambling are not the result of any particular prejudiced set of presuppositions on the part of any religious organizations, but that these prohibitions we have heard about recently from our ministerial friends are prohibitions that have originated due to a corruption that has gone on in the moral area.

I would like to ask the opposition what protection we would have against professional gamblers who could very easily change the name of a night club to a charitable organization, donate charity to their needy in-laws and in a very short time, almost overnight, engage in a corruptive practice that would in a short time corrupt even these sincere groups themselves.

Therefore, I should like to speak to Senator Lewis' question. Last week he asked me to state the official position of the organization which I represent, the Hudson Methodist Parish, in regard to whether or not this Committee should deal with gambling at all. My group, with the full approval of our Bishop of this area and our Jersey City District Superintendent, wants to go on record as unanimously requesting this Committee to deal specifically with the gambling issue in the new Constitution.

We feel that to turn over the responsibility to the Legislature might give an opportunity for an unnecessary amount of lobbying, leading perhaps to a bit of scandal, as it has in the past. We do not feel, of course, that would come about; but human nature is no different today than it was yesterday, and no different today than it will be tomorrow. We feel that to let the people vote on an amendment would make for complete confusion. Suppose the amendment is approved and the Constitution voted down, what then? Suppose the so-called amendment is worded, "Do you favor charity gambling?" Would not those opposed to gambling call the question loaded as a lead question? Suppose the so-called amend-

ment were worded, "Do you favor no gambling with the exception of pari-mutuel betting?" Would not our Catholic war veteran friends consider the question worded to work against their interests?

Now, our organization feels that complete confusion is the only possible result of an effort to put the vote directly before the people. They have spoken, as they did in 1897, in the constitutional amendment that we now have. Therefore, it seems to me we can do no other than recommend to this Committee the writing into the Constitution of no further exceptions to the present provisions.

At this point may I just say that in conclusion it seems to me that those who have flagrantly violated the law in Hudson County in the past year, and at the present time are violating it in Jersey City, are hardly those who should instruct this Committee to help them make the law work.

President O'Sullivan, on his stationery for the committee which he represents, the Hudson County Federation of Holy Name Societies, has made this statement in point six of his resolution—that many fraternal, civic, patriotic and religious organizations have been conducting carnivals, bazaars and other fund-raising functions in order to raise revenue to carry on their work. Therefore, what point six of this resolution states is that these organizations have been deliberately violating the law, setting aside the opinions of Judges Minturn, Brogan and Chief Justice Case, in order that they might go ahead to do what they wanted to do, regardless of law.

May I add these following instances of flagrant violations of the law in Hudson County: a bazaar sponsored by a religious organization May 27 to June 9 in Bayonne; St. Michael's in Jersey City a few weeks later; a few weeks later the Sacred Heart lottery in Journal Square; gambling at St. Nicholas in Jersey City in June; at St. Aedan's and St. Bridget's, the car lottery in August; money wheels at our Lady of Sorrow in September; gambling in September at St. Bridget's carnival as well as St. Alicia's in September; and at St. Aedan's a carnival of ten days' duration when Judge Anthony Botte refused a warrant to stop the gambling and police would not cooperate upon requests to stop it. So my organization says—take a look. What assurance do we have from these violators of the law that they will keep any law, even one that permits charity gambling? The lawbreakers, therefore, win the day with this Committee by persuading them to do what they have been doing as crime for so long. If the opposition wishes, I can furnish this Committee with a list of organizations who at the present time are continuing in their persistent efforts to flaunt the present laws of New Jersey.

Thank you.

CHAIRMAN: Any questions?

MR. ARTHUR W. LEWIS: Yes, Mr. Chairman. Doctor, do I

understand that you now advocate that any proposed Constitution adopted at this Convention contain a provision similar to our present Constitution, which authorizes horse track racing, etc., and prohibiting other forms of gambling?

REV. GREEN: I say yes, but you must understand why I say yes. We feel it is absolutely impossible to muster any strength at all to get a repeal of the prohibition against gambling on the part of the pari-mutuel group. Therefore, we say, let no further wedge be driven in. We can't stop that. You will write that in, it would seem to me, regardless of what we say if you write it in at all. But we can, we feel, influence this Committee not to allow charity gambling as a further wedge to opening up all gambling. And may I say, the very argument that Mr. Frank Fahy uses in support of charity gambling as being discriminatory would also be a strong argument in favor of opening up all gambling, because it would still be discriminatory against commercial gambling if charity gambling came in. Do I make myself clear, sir?

MR. LEWIS: You do.

CHAIRMAN: Any further questions? If not, thank you, Doctor.

That concludes the hearing. May I ask the members of the Committee to adjourn to our own room for a very short committee meeting?

(The session adjourned at 4:30 P. M.)

* * *

(The following transcript was taken before the Committee in the committee room preceding the afternoon public hearing, to accommodate Messrs. Copsey, Griggs and Handler whose appointments made it impossible for them to await the public session.)

CHAIRMAN EDWARD J. O'MARA: Will you state please, Colonel, for whom you are appearing?

MR. ROBERT L. COPSEY: I am appearing for the State Aviation Commission; I am Director of the Department of Aviation for the State of New Jersey. Mr. Chairman, ladies and gentlemen:

I would like to speak for aviation and its development and its encouragement in New Jersey. We are rapidly entering upon an air age that needs assistance in our Constitution in order sufficiently to provide for some type of zoning for the form of airports and even to the point of priority for uses of air spaces. We would like to present what we think challenges the legislative constitutional procedures here in New Jersey.

At present the air density of air traffic over your State, located as it is between two heavily populated metropolitan areas, requires the observation of safe usages in the air. Those air traffic densities add up to approximately 600 trans-state movements a day. We perceive a time when our interstate commerce will be of such density that the

air space utilization will call for interstate commerce control unless we, in some manner or other, place a limit or priority system to safeguard the interest of the individual aircraft owner residing in the State, who uses his airplane for business, or recreation, or even for educational purposes. From what viewpoint, we are submitting a preliminary draft of suggested constitutional change at this time. I will ask Mr. Griggs to enter that at this time, as I am not a lawyer but more at home in the cockpit of an airplane.

MR. JOHN W. GRIGGS: I appear for the Aviation Commission. The Aviation Commission is concerned about the present section of the Constitution concerning zoning, which is Article IV, Section VI, paragraph 5. First, that provision limits zoning legislation or zoning ordinance to municipalities and precludes a county from acting by resolution or formal legal procedure to put any kind of zoning regulation into effect. We presently have the Federal Airport Aid Act, which allows counties and municipalities to call upon the federal authorities to make donations of funds to the end that airport conditions may be improved. The Federal Government improvement presupposes certain standards. Among those standards is a requirement that the airport be protected for future purposes, so that with a large investment of federal funds, the airport will not be faced at the end of one of its runways with a 500-foot stack or some manner of growth—natural growth or growth of buildings—that will prohibit the use of the airport as an airport. For that purpose, the Commission would suggest that counties, particularly in the light of the fact that several are about to or have instituted proceedings for county airparks as airports, be allowed, in addition to municipalities, to adopt zoning regulations by appropriate resolution or otherwise.

Some feel that the present constitutional provision in Article IV is adequate under the circumstances. I believe the Supreme Court, in about 1944, in the case of *Yara Engineering Company v City of Newark*, 132 N. J. Law 370, held that such an ordinance, when passed by the City of Newark, was a deprivation of property without due process of law and, hence, unconstitutional. Newark was endeavoring to protect the east end of its runways from a large building which would have stifled the operation of the airport generally.

Mr. Littman has prepared for the use of this Committee a suggested form of amendment which will cover both county and municipal zoning ordinances in respect to the use of air as an avenue of commerce, and the recommendations that he submits merely contemplate the present constitutional provision, adding the words: "land and the use of air as an avenue of commerce." The only other suggestion is the matter suggested heretofore governing enlarging

powers in order that counties may take advantage of this particular constitutional provision. I think that is all.

CHAIRMAN: Have you a draft?

MR. GRIGGS: I have, sir.

(Hands draft to Chairman.)

CHAIRMAN: The witness has handed me a draft of the proposed section for inclusion in the new Constitution. *(Reading):*

"Article IV, Section VI, paragraph 5:

The Legislature may enact general laws under which municipalities and counties may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings, structures, land and the use of air as an avenue of commerce, according to the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature."

MR. DOMINIC A. CAVICCHIA: Following the language of the 1944 proposed Constitution, in which there was no reference to air, Colonel, the proposal, starting from this phrase: "buildings and structures according to their construction, and the nature and extent of their use and the nature and extent of the uses of land"—would that cover what you are after?

MR. GRIGGS: I am much inclined to think it would. The Supreme Court decision—and here you see my own personal interpretation of Mr. Justice Case's decision—was that the present constitutional provision, in itself, was all right, but the Legislature had not passed enabling legislation to allow municipalities to zone for air purposes. However, apparently I am quite wrong in my interpretation, as I understand the Chief Justice stated quite to the contrary, and the committee of the New Jersey Bar Association has given another interpretation. I stand alone, backed by the Essex County Bar Association, but that is all.

MR. WESLEY L. LANCE: Have any states obtained such relief by partial condemnation?

MR. GRIGGS: We have condemnation now. From an expense standpoint, it is impractical.

MR. LANCE: Have any other states solved the problem by legislation?

MR. GRIGGS: Pennsylvania has zoning as such, for the protection of airports.

MR. LANCE: As I see your problem—right here is to be an airport; you are afraid that if John Jones, who owns this adjoining field, builds his structure too high, he will ruin your airport.

MR. GRIGGS: That is it exactly.

MR. LANCE: By partial condemnation, the public, if they want to restrict John Jones' property, will pay for it accordingly. The

building compensation he would get would not be the same as that acquired by fee simple.

MR. GRIGGS: I think the Federal Government has handled that through a Court of Claims. It allows partial damages based on proportionate loss of use of the property. I know of no instance in this State. As a matter of fact, I do not think it could be done today.

(Mr. Charles Handler appeared)

CHAIRMAN: Will you state for the record what organization, if any, you represent?

MR. CHARLES HANDLER: I do not know how much of your valued time you wish to give, so I have prepared a copy of my remarks and will give the copy to the stenographer. *(Reading):*

I appear on behalf of the Board of Trustees of the New Jersey State Elks.

At its last convention the fraternity passed a resolution against continuance of the present article concerning gambling in the Constitution. A copy of this resolution has been sent to each of the delegates.

There are 62 lodges of Elks throughout the State of New Jersey. These lodges expend on an average of \$124,000 a year for assistance to crippled children alone. This is exclusive of various other charity expended during the year. During the last 19 years the lodges have spent \$2,466,633 for work on crippled kiddies.

The source of these funds have been various social and fundraising enterprises frequently employing simple games of skill or chance like bingo, lotto, raffles, drawings for prizes and the like.

We, therefore, have a direct and peculiarly special interest in the question of the type of gambling plank to go into the new Constitution. Also, the members individually, as loyal citizens of the State and the fraternity itself, through its basic and fundamental obligations of devotion to the State, must speak up as a matter of principle.

We are definitely opposed to the present provisions of the Constitution.

Personally I feel that gambling regulation has no place in the constitution of a state. Gambling is not a crime against any universally recognized natural law, nor is it forbidden by any basic or ancient religious law. It is not in the category of those crimes which are "things evil in themselves," termed by the law professors "*malum per se*." At best, gambling is in the category of things made unlawful because the legislature or the majority of the people voted them unlawful—called by the same professors "*mala prohibita*."

"Thou shalt not kill" is a good example of the former. Murder is a crime based on both a natural and religious law. Yet, as the *Newark Star-Ledger* wrote editorially on July 3, 1947, no one would think of putting a ban against murder in the Constitution.

Forbidding the sale and use of intoxicating liquors, our so-called National Prohibition Law, was a good example of the second type of crime. Because it was contrary to the accepted customs of a majority of the people in large geographical areas it led to the most scandalous demoralization in the legal and moral atmosphere of this great nation, affecting old and young alike.

Without going into the historic condition which brought on the fashion for placing bans on lotteries in state constitutions, a movement akin to the spread of Prohibition, let me state that over the past 40 years it has become apparent that the folly of a constitutional provision in the field of such widely practiced human activities is provocative of widespread legal and moral hypocrisy tending to undermine respect for all law and moral teaching.

Today at least 11 states have already completely eliminated from their constitutions all reference to gambling.

Frankly speaking, I believe there isn't a single member of this Convention who hasn't himself or through a member of his family participated in a charitable bazaar or fund-raising project for some church, hospital, legion or lodge charity fund in which a door prize may have been given, or chance purchased on a drawing for prizes donated by the merchants of the neighborhood, or the cake baked by Aunt Martha. I don't believe any member of this Convention from the smaller towns and villages hasn't at one time or another participated in similar fun-raising community projects for the benefit of their volunteer fire associations.

Who of us hasn't indulged in penny ante poker? Whose women-folk don't indulge in 1/20 of a cent bridge or gin rummy? And have you seen the crowds of lovely, decent, clean folks, our neighbors and fellow citizens who until very recently crowded the halls of lodge meetings, social and church gatherings throughout the State playing bingo, which is merely a group method of playing the lotto of our childhood.

I say until recently, because then our Supreme Court justices under the prodding of a small group of antiquated blue-law advocates took to charging grand juries that such goings-on were unlawful—that these participants I just described were not law-abiding, decent, clean-minded neighbors and fellow-citizens. They were criminals. The Legislature was powerless to act, to protect us in the expression of our harmless activities. The Constitution forbade it. I am reasonably certain that even these exalted Supreme Court justices or the members of their families have been and are just as charitable as the rest of us, and have on occasions, at least prior to the current alarm, participated in and perhaps arranged the charitable enterprises we have just discussed.

The same *Newark Star-Ledger* under date of July 4, 1947, reports

that as a result of an order from one of our Supreme Court justices the prosecutor of Passaic County closed lotteries for cars run by St. Luke's Episcopal Church, Hohokus; Gerald V. Carroll Post, No. 161, American Legion, and Passaic City Post, No. 504, Veterans of Foreign Wars. In the name of common sense, should such activities be made irrevocably illegal by constitutional ban?

You are preparing a Constitution to fit the customs and thinking of the people of New Jersey in the year 1947 and the future; not the past. The majority of our people are not opposed to all forms of gambling. Only in 1939 a majority voted in favor of betting on horse races through pari-mutuel machines at the track. Of course, a much greater majority would be in favor of the type of games of chance that we are talking about. And, of course, a Legislature not shackled by a constitutional ban would be responsive.

We don't argue that all types and methods of gambling enterprises are desirable, but mere possibility of abuse should not drive us to an unenforceable legal position.

Last week the press reported an argument made before you by a proponent for retention of the constitutional ban who, unfortunately, intimidated that any institution that uses these devices for fund-raising purposes does not deserve to exist. In my opinion such innuendoes tend to encourage narrow-minded, divisive prejudices in our people and are more destructive of the moral and social tone of the State than any gambling abuses. Yet no one would say that we should abolish freedom of speech. There is both a legal and social method for correcting that abuse.

I suppose there isn't a man or woman in public office, including many of the members of this Convention, who at one time or another, or maybe right now, didn't feel like screaming at some editor or reporter for being misquoted or abused in the press. Yet would anybody think of advocating, at least publicly, a ban on freedom of the press? We feel we can cope with the abuse thereof.

Why, then, in such a relatively unimportant sphere should we continue a preposterous ban which makes hypocrites of hundreds of thousands of our citizens daily in their homes, communities, lodges and general meeting-places. This breeds disrespect for all law; it fosters increasing differences between groups smacking of intolerance. The overwhelming majority of the people are not opposed to all forms of gambling. We, therefore, propose:

1. Omission of any gambling ban in the Constitution, or
2. In the alternative, the present plank with the proviso that drawings, bingo and like games of chance shall be lawful if operated in conjunction with fund-raising enterprises for charitable and religious purposes administered by established churches, hospitals, fraternal lodges and the like.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 8, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 4:30 P.M., following public hearings of the Committee. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Proctor and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Morrissey.

Motion was made, seconded and unanimously carried, that there be no further public hearings by the Committee until after a tentative Article is drafted.

Senator Lewis made a motion that the Committee study, between now and next Tuesday, July 15, the data prepared for the members of the Committee by Mr. Besore, and that the Committee come prepared next Tuesday to review its work and stay with it until the Committee completes a preliminary, tentative draft of the sections of the Article of the Constitution referred to it by the Convention for consideration. The motion was seconded by Mr. Leonard and unanimously adopted.

The Secretary reported that he has received, in response to his written request of July 2, 1947, an opinion of the Attorney-General with reference to the Proposal (Proposal No. 10) to have the Constitution provide for the election of Assemblymen by Assembly Districts. A copy of the opinion is submitted herewith for inclusion in the records of the Committee:

Copy of Request:

"July 2, 1947

Hon. Walter D. Van Riper,
Attorney-General,
State House,
Trenton, New Jersey.

My dear Attorney-General:

I enclose copy of Proposal introduced into the Constitutional Convention and referred to the Committee on the Legislative.

By direction of said Committee, I request you to give to this Committee your legal opinion as to whether, under the terms of the Constitutional Convention Act and the referendum held pursuant thereto, the subject matter of this resolution can properly be considered by the Convention;

or whether, on the other hand, the wording of said act and referendum would forbid consideration of the same.

As we are having the next meeting of our Committee on Tuesday, July 8, I would appreciate, if possible, having your opinion before that date.

Very truly yours,

(Signed) Leon Leonard
Leon Leonard, Secretary,
Committee on the Legislative."

Copy of Reply:

"July 7, 1947

Hon. Leon Leonard
Secretary, Committee on the Legislative
New Jersey Constitutional Convention
New Brunswick, New Jersey

My dear Mr. Secretary:

I beg to acknowledge receipt of your letter of the 2nd instant in which you enclose a copy of a proposal introduced into the Constitutional Convention and referred to the Committee on the Legislative.

This proposal is designed to provide for the election of members of the General Assembly by Assembly districts within the respective counties, and it is intended to revise Article IV, Section III of the present Constitution. Your letter requests an opinion 'as to whether under the terms of the Constitutional Convention Act and the referendum held pursuant thereto, the subject matter of this resolution can properly be considered by the Convention; or whether *** the wording of said act and referendum would forbid consideration of the same.'

The Legislature by the enactment of Chapter 8 of the Laws of 1947 authorized a referendum in which the voters were given the opportunity to decide whether or not they desired a Constitutional Convention.

The act itself is entitled 'An Act to provide for a State Constitutional Convention so instructed by the legal voters that it shall have no power to propose any change in the present basis of representation in the Legislature,' etc. Section 2 of the act authorizes the Convention to prepare a new Constitution and provides 'that the Convention shall in no event agree upon, propose or submit to vote of the people *** any provision for change in the present territorial limits of the respective counties or any provision of legislative representation other than provision for a Senate composed of one Senator from each county and a General Assembly of not more than sixty members apportioned among the counties according to population so that each county shall at all times be entitled to at least one member chosen for and elected by the legal voters of the respective counties.'

Section 13 provides for the submission to the voters of the question as to whether or not they desire a Convention, and the voters who voted in favor of authorizing the Convention, as the majority of them did, voted 'yes' on the question 'For such a Constitutional Convention instructed to retain the present territorial limits of the respective counties and the present basis of representation in the Legislature.'

Generally speaking, a Constitutional Convention represents the people assembled in convention, and the people when so assembled are free to exercise their judgment as they see fit in the making of a new Constitution. Actually, of course, the people cannot all be assembled in a convention, and therefore, they act through their representatives who are the delegates, and normally the delegates would have this same uninterfered-with power of discretion as the people themselves would have.

That situation applies to this Convention except where the people themselves have actually spoken and have instructed their delegates on some specific question, and when so actually and specifically instructed, the delegates are bound to follow that instruction.

In the case of yourself and your fellow members of the Convention you

did in accordance with the law before entering upon your duties subscribe to an oath in which you said that you would 'abide by the instructions of the people as contained in the referendum.' The only instruction given by the people in the referendum was the instruction 'to retain the present territorial limits of the respective counties and the present basis of representation in the Legislature.'

When a delegate assumes his obligations by taking the oath referred to, he enters into a solemn covenant with the voters to carry out that instruction, and a deviation therefrom would mean, of course, a violation of the obligation of his oath.

The question, therefore, with which we are immediately concerned limits itself to an interpretation of the words 'the present basis of representation in the Legislature.' In other words, does this mean that members of the General Assembly must continue to be elected by counties or can they be elected from Assembly districts as proposed in the Proposal submitted to the Convention?

This question was decided by the courts of this State as long ago as 1893. The Constitution of this State, by Article IV, Section III, paragraph 1, provides for the manner of election of members of the General Assembly in the following language:

"The General Assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants."

That language, therefore, fixes 'the present basis of representation in the Legislature' so far as it applies to members of the General Assembly. Now, what does 'basis of representation' mean? In the case of *State v Wrightson*, 56 N. J. L. 126, the Supreme Court of this State in a most exhaustive opinion by the learned Justice Depue, construed this section of the Constitution upon the very question which is presented here, namely, whether or not Assemblymen must be elected by counties at large or whether they could be elected by districts. The court there held that the members of the General Assembly apportioned to any county must be elected by the voters of the entire county and that the act of the Legislature which was under consideration and which provided for the election of members by Assembly districts was in violation of the constitutional provision above referred to. This means that the court held that the 'basis of representation,' so far as it applied to the election of Assemblymen, made necessary their election by the voters of the county at large and prohibited their election by Assembly districts.

This decision of the Supreme Court in the *Wrightson* case was approved in 1906 by the Supreme Court in an opinion by Mr. Justice Read in the case of *Smith v Baker*, 73 N.J.L. 328, and was further approved by the Court of Errors and Appeals in the case of *Smith v Baker*, 74 N.J.L. 591. It will be seen, therefore, that both our Supreme Court and our Court of Errors and Appeals have passed upon this question and have decided that the 'basis of representation' in the General Assembly, as presently existing, is the election of members thereof by counties, and the court has specifically said that they cannot be elected by districts.

Therefore, since the delegates to your Convention were specifically instructed by the voters on this question, and since they assumed the duties of delegates only after taking an oath wherein they obligated themselves to carry out those instructions, if the Proposal which has been submitted for the election of Assemblymen by districts were to be included it would be done in violation of the specific instructions given by the voters and in violation of the delegates' oath.

In addition, I call your attention to the fact that the act of the Legislature (*Chapter 8, P.L. 1947*) which created the Convention and which provides for the submission to the voters at the General Election in November of the question as to whether or not the proposed new Constitution should be adopted, also contains a provision for review by the Secretary of State.

This provides that the Secretary of State shall, as soon as the Convention has completed its labors, review the proposed new Constitution and 'determine whether the Convention has complied with its instructions as voted by the people.' The Secretary of State is thereupon obligated to certify his findings to the Convention and unless he certifies that the proposed Constitution complies with the instructions given by the people to the delegates, the Constitution cannot be submitted to the people for their approval or disapproval. Therefore, even if the Convention should include in the Constitution such a proposal as the one suggested for the election of Assemblymen by districts, the people would be deprived of an opportunity of voting for the approval or rejection of the proposed Constitution unless the Secretary of State should certify that in his judgment the said proposed Constitution was in compliance with the instructions given by the people to their delegates.

In my opinion, the Secretary of State could not, in fact and in law, so find. It is my further opinion that the Convention cannot, in compliance with instructions of the voters and with the oath of the individual delegates, include this proposal in any proposed new Constitution.

Very truly yours,

(Signed) Walter D. Van Riper
Attorney-General

On motion duly made, seconded and unanimously carried, the meeting adjourned until Tuesday, July 15, 1947, following the meeting of the Constitutional Convention, scheduled to be held at 10:00 A. M. on that day.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 15, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held in Room 102 of the Gymnasium Building, Rutgers University, at 11:30 A. M. The following were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Leonard, Lewis, Proctor and Sanford. (Mr. Charles de F. Besore, committee technician, was also present.)

Absent: Morrissey.

A motion was made and seconded that the minutes of the last meeting be approved. The motion was unanimously carried.

Chairman O'Mara suggested that the Committee then retire into the Legislative Committee room on the second floor for the purpose of holding an executive session to start drafting a tentative Article. He explained to the people there present who had come expecting a public hearing that when the tentative Article was drafted, it would receive wide publicity and the Committee would hold further public hearings on that tentative Article. He also stated that at the conclusion of the executive session the press would be advised as to the progress made. The Committee then adjourned for executive session to Room 205.

The Committee considered the tentative Article drafted by Mr. Besore for their consideration.¹

On motion, the meeting recessed until 2:30 P. M.

* * *

The meeting of the Committee on the Legislative reconvened at 2:30 P. M., all members being present, including Mr. Morrissey, Mr. Besore was also present.

The Committee further considered the tentative Article drafted by Mr. Besore for their consideration.

At the request of the Committee, Comptroller Homer C. Zink appeared and gave his views with respect to Section V, paragraph 5, of the tentative Article drafted by Mr. Besore.

On motion made, seconded and unanimously adopted, the meeting adjourned until 10:00 A. M., Wednesday, July 16, 1947, after

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

which the Chairman talked with members of the press and advised them as to the progress made by the Committee at this meeting.

COMMITTEE ON THE LEGISLATIVE

Tuesday, July 15, 1947

CONFERENCE NOTES

Consideration of the Legislative Article (tentative) drafted for the Committee by Mr. Charles DeF. Besore:

Section I, paragraph 1:

The Committee agreed that Section I, paragraph 1 be adopted without change.

Paragraph 2:

Section I, paragraph 2 was approved with the exception that a comma be inserted after the word "year"—the first word on the fourth line from the bottom of the paragraph. Also that a capital "L" be used for the word "Legislature" throughout the Article.

Paragraph 3:

Section I, paragraph 3 was adopted with the following changes: Strike out the semi-colon after the word "elections," line 2, and insert a period. Strike out the word "and" following the word "elections" and capitalize the word "The." Line 4: Strike out the word "of" and substitute the word "in" preceding "January." Strike out the word "in" following "January" and substitute the word "of."

Section II, paragraph 1:

Section II, paragraph 1 shall remain as written.

Paragraph 2:

Section II, paragraph 2 shall remain as written.

Section III, paragraph 1:

On the general proposition of the election of Assemblymen by districts, the Committee Report will contain a statement that the Committee favors the election of Assemblymen by districts, the vote being seven in the affirmative, three in the negative, and two members not voting—one member absent. Section III, paragraph 1 shall be retained with the exception that the words "and every subsequent," on the 13th and 14th lines shall be eliminated, and the commas after the word "next" and the word "subsequent" in the third line from the bottom of the paragraph be deleted.

Section IV, paragraph 1:

Section IV, paragraph 1 shall be included as written in the tentative draft.

Paragraph 2:

Section IV, paragraph 2 shall be included as written in the tentative draft.

Paragraph 3:

Section IV, paragraph 3 shall be incorporated as written in the tentative draft.

Paragraph 4:

Section IV, paragraph 4 shall be retained as written in the tentative draft.

Paragraph 5:

Section IV, paragraph 5 shall be retained as written in the tentative draft, with the exception that the word "nor" on line 4 shall be changed to the word "or."

Paragraph 6:

The Committee agreed, Mr. Cavicchia reserving his vote, that a provision shall be added to paragraph 6 which shall provide that one full calendar day shall intervene between the day upon which a bill receives its second reading and the day upon which it is moved for third reading in the House of origin.

It was agreed by the Committee, Mr. Cavicchia reserving his vote, that the provisions of paragraph 6, Section IV, be further supplemented by inserting a provision that the requirement for the intervention of a full calendar day may be dispensed with by the declaration of an emergency, said emergency to be declared by a vote of three-fourths of the members of the House of origin of the bill, the yeas and nays of the members on the question of the existence of the emergency to be entered in the journal.

The Committee resolved that it request the Convention to recommend to the Houses of the Legislature that adequate provision be made in the rules of the Houses for supplying copies of all bills to the members of the Legislature for a sufficient length of time prior to third reading to insure adequate consideration of the contents of the bills.

(The meeting adjourned until 2:30 P. M.)

* * *

(The meeting reconvened at 2:30 P. M.)

Section IV, paragraph 7:

It was agreed that the Constitution provide that the members of the Legislature shall receive an annual salary, to be fixed by law, and any increase or decrease in that salary shall not become effective during the legislative session in which the bill providing for the increase or decrease thereafter is passed.

The Committee voted that this Committee report to the Convention a recommendation that the salary of members of the Senate should be fixed, in the first instance, at \$3,000 annually—the vote being seven in the affirmative, two in the negative, Mrs. Hacker reserving her vote.

The Committee voted that the recommendation of the salary of the members of the Assembly be fixed, in the first instance, at \$2,500, Mrs. Hacker and Mr. Cavicchia reserving their votes.

It was agreed that the provisions of Section IV, paragraph 7, prohibiting any other allowance or emolument to members of the Legislature shall be retained, and also the provision that the President of the Senate and the Speaker of the House shall receive additional compensation, equal to one-third of their allowances as members as fixed by law.

Paragraph 8:

It was agreed that the provisions of Section IV, paragraph 8, relating to privilege from arrest be retained without change; that the provisions relating to immunity from libel should be broadened so as to protect a member of the Legislature for any statement, speech or debate in either House or at any legislative committee meeting.

Paragraph 9:

The Committee voted to eliminate paragraph 9, Section IV, of the tentative draft.

Section V, paragraph 1:

It was agreed that the provisions of Section V, paragraph 1 of the tentative draft shall be retained, with the following exceptions: The words "of profit" shall be inserted after the word "position" in the fifth line. The word "law" in the sixth line shall be stricken and there shall be substituted the words "legislative enactment." Line 7 the word "law" shall be stricken and the words "legislative enactment" substituted therefor. The last sentence of the paragraph shall be eliminated.

Paragraph 2:

The Committee decided that Section V, paragraph 2 of the tentative draft be preserved as written.

Paragraph 3:

It was agreed that the provisions of Section V, paragraph 3 of the tentative draft be retained, with the exception that the word "be" in the last line be eliminated and the word "become" substituted therefor.

Paragraph 4:

It was agreed that the provisions of Section V, paragraph 4 of the tentative draft be retained, with the exception that a comma be inserted after the word "profit" in line 3.

Paragraph 5:

The Committee decided that the provisions of Section V, paragraph 5 shall be as in the tentative draft, except that there be inserted the words "a State Auditor" after the word "except." Dis

senting, Judge Lance and Judge Camp; Mrs. Hacker and Mr. Cavicchia reserving their vote.

Section VI, paragraph 1:

It was agreed by the Committee, Judge Camp and Senator Lewis dissenting, that the provisions of Section VI, paragraph 1 be retained as written.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Wednesday, July 16, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 10:30 A. M.

The following members were present: O'Mara, Chairman, Cavichia, Hacker, Jorgensen, Lance, Leonard, Lewis and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Camp, Morrissey and Proctor.

The Committee considered, informally and at length, the various provisions of the tentative Article drafted by Mr. Charles deF. Besore.¹

Senator Proctor arrived shortly before the close of the morning session.

On motion, the meeting recessed until 2:15 P. M.

* * *

The meeting of the Committee on the Legislative reconvened at 2:15 P. M., all members being present, including Senator Proctor and Mr. Morrissey, Judge Camp being the only absent member. Mr. Besore was also present.

The Committee further considered the provisions of the tentative Article drafted by Mr. Besore.

The Committee also considered and acted on various provisions to be added to the tentative draft prepared by Mr. Besore, among them a recommendation to the Convention that alternative propositions be submitted to the people for inclusion in the proposed Constitution in connection with the clause having to do with gambling.

The following proposals assigned to the Committee by the Convention were considered and action taken as noted:

On motion made, seconded and carried, Proposal No. 10 was rejected.

On motion made, seconded and carried, Proposal No. 23 was rejected.

On motion made, seconded and carried, Proposal No. 25 was rejected.

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

On motion made, seconded and carried, Proposal No. 31 was rejected.

On motion made, seconded and carried, Proposal No. 32 was rejected.

On motion made, seconded and carried, Proposal No. 33 was rejected.

On motion made, seconded and carried, Proposal No. 34 was rejected.

On motion made, seconded and carried, Proposal No. 39 was rejected.

On motion made, seconded and carried, Proposal No. 40 was rejected.

On motion made, seconded and carried, it was decided to defer for consideration Proposal No. 41, pending a conference with the proponent thereof.

On motion made, seconded and carried, it was decided to hold a public hearing on the tentative Article now being drafted, on Monday, July 28, 1947, at 10:00 A. M. in the Gymnasium, Rutgers University, New Brunswick.

On motion duly made, seconded and unanimously adopted, the meeting adjourned until Monday, July 21, 1947, at 10:00 A. M., after which the Chairman talked with members of the press and advised them as to the progress made by the Committee at this meeting.

COMMITTEE ON THE LEGISLATIVE

Wednesday, July 16, 1947

CONFERENCE NOTES

Further consideration of the Legislative Article (tentative) drafted for the Committee by Mr. Charles deF. Besore:

Section VI, paragraph 2:

It was agreed that the language of Section VI, paragraph 2 of the tentative draft be retained, with the exception that a comma be added after the word "structures" in the sixth line and after the word "use" in the eighth line; Mrs. Sanford and Mr. Cavicchia reserving their votes.

Paragraph 3:

The Committee agreed that the language of Section VI, paragraph 3 of the tentative draft be retained, except that the word "airport" be inserted after the word "parkway" on the sixth line, and also on the thirteenth line.

Section VII, paragraph 1:

The Committee agreed that the language of Section VII, paragraph 1 be retained.

Paragraph 2:

The Committee agreed that consideration of Section VII, paragraph 2, be deferred. (See *post*)

Paragraph 3:

It was agreed that the language of Section VII, paragraph 3 of the tentative draft be retained.

Paragraph 4:

It was agreed that the language of Section VII, paragraph 4 of the tentative draft be retained, with the exception that a comma be added after the word "object" on the fifth line.

Paragraph 5:

It was agreed that the language of Section VII, paragraph 5 of the tentative draft be retained, except that the second sentence, beginning "No general law * * *," shall be stricken.

Paragraph 6:

It was agreed that the language of Section VII, paragraph 6 of the tentative draft be retained without change.

Paragraph 7:

It was agreed that the language of Section VII, paragraph 7 of the tentative draft be retained without change.

Paragraph 8:

It was agreed that the language of Section VII, paragraph 8 of the tentative draft be retained, with the exception that the word "bill" in the first line be stricken and the word "law" substituted therefor.

(The meeting adjourned until 2:15 P. M.)

* * *

(The meeting reconvened at 2:15 P. M.)

Section VII, paragraph 9:

It was agreed that the language of the first paragraph of Article VII, paragraph 9 be retained without change.

Sub-paragraph 1:

It was agreed that the language of the sub-paragraph 1, paragraph 9 be retained without change.

Sub-paragraph 2:

It was agreed that the language of paragraph 9, sub-paragraph 2, be retained, eliminating the words "or pension" in the second line.

Sub-paragraph 3:

It was agreed that the language of paragraph 9, sub-paragraph 3 be retained, striking the words within the brackets.

Sub-paragraph 4:

It was agreed that the language of paragraph 9, sub-paragraph 4 be retained, striking out the words within the brackets.

Sub-paragraph 5:

It was agreed that the provisions of paragraph 9, sub-paragraph 5 be retained without change.

Sub-paragraph 6:

It was agreed that the language of paragraph 9, sub-paragraph 6 of the tentative draft be retained, striking out the brackets and striking out the word "municipalities" in the second line.

With respect to Section VII, paragraph 9, sub-paragraph 6, the Committee voted that an exception against the prohibition of passage of private, special or local laws, with respect to regulating the internal affairs of municipal corporations formed for local government be made in the case of authorizing the Legislature by a two-thirds vote of both Houses to pass such private, special or local laws on petition of the governing body of the municipality, the act of the Legislature to be subsequently adopted by ordinance of the municipality or county affected.

The Committee voted that a clause be inserted in the Constitution prohibiting the Legislature from forcing municipalities to make mandatory appropriations without the consent of the municipality.

Sub-paragraph 7:

It was agreed that the language of paragraph 9, sub-paragraph 7 be retained without change.

Sub-paragraph 8:

It was agreed that the language of paragraph 9, sub-paragraph 8 be retained without change.

Sub-paragraph 9:

It was agreed that the language of paragraph 9, sub-paragraph 9 be retained without change.

Sub-paragraph 10:

It was agreed that the language of paragraph 9, sub-paragraph 10 be retained without change.

Sub-paragraph 11:

It was agreed that the language of paragraph 9, sub-paragraph 11 be retained without change.

Sub-paragraph 12:

It was agreed that the language of paragraph 9, sub-paragraph 12 be retained without change.

Section VII, paragraph 9, last paragraph

It was agreed that the language of the last paragraph of Section VII, paragraph 9 of the tentative draft be retained without change.

Section VIII, paragraph 1:

It was agreed that the language of Section VIII, paragraph 1 be retained without change.

Paragraph 2:

It was agreed that the language of Section VIII, paragraph 2 be retained without change.

Section VII, paragraph 2:

As to Section VII, paragraph 2, the Committee has decided that it recommend to the Convention that alternative propositions be submitted to the people for inclusion in the proposed Constitution and that the first proposition to be submitted is the existing clause, as set forth in Section VII, paragraph 2 of the tentative draft. The alternative proposition is as follows:

"It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week-days only and in duly legalized racetracks, at which the pari-mutuel system of betting shall be permitted. The Legislature may authorize and regulate the conduct of games of chance by bona fide charitable, religious, fraternal or veterans associations or organizations. Except as hereinabove provided, no lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only from which the State shall derive a reasonable revenue for the support of government, and games of chance conducted by bona fide charitable, religious, fraternal or veterans associations or organizations; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty or punishment now provided therefor be in any way diminished."

The Committee voted that there be no limitation upon the length of legislative sessions.

The Committee voted that the provisions of Article III, Section I, paragraph 4 of the Proposed Constitution of 1944 be included in the tentative draft, with the provision that the petition shall state the matter or matters to be considered and that the call, when the session is called upon petition, shall specify the matters named in the petition; and when called by the Governor, the call shall specify the matter or matters to be considered, and no other matter or matters shall be considered at the session except those named in the call.

The Committee voted not to include in the Constitution a provision that the Senate act on confirmation of nominations in open session.

The Committee voted not to include in the Constitution a provision relating to the continuous revision of the laws.

The Committee voted that the question of automatic special session of the Legislature for consider vetoes be held in abeyance for further consultation with the Chairman of the Committee on the Executive, Militia and Civil Officers.

The Committee voted that it recommend to the Committee on

the Executive, Militia and Civil Officers that it insert a provision in the Executive Article prohibiting a legislative officer who becomes Acting Governor from exercising his legislative functions while so acting.

The Committee voted to recommend to the Committee on Rights and Privileges the inclusion of a clause fixing the time for holding elections in connection with the matter of suffrage.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Monday, July 21, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 10:30 A.M. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Lewis and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Leonard, Morrissey and Proctor.

The Committee considered, informally and at length, the various provisions of the revised tentative draft of the Legislative Article prepared by Mr. Charles deF. Besore.¹

On motion, duly made, seconded and carried, the meeting recessed until 2:00 P.M.

* * *

The meeting of the Committee on the Legislative reconvened at 2:00 P.M., all the above members being present and in addition Senators Proctor and Morrissey, Mr. Leonard, the Secretary, being the only absent member.

The Committee further considered the provisions of the revised tentative Article drafted by Mr. Besore, in preparation for printing in its final tentative form, for submission to the public for discussion at the public hearing to be held on Monday, July 28, 1947, at 10:00 A.M. in the Gymnasium, Rutgers University, the State University of New Jersey, New Brunswick. Revision of the tentative Article was completed and copy given to Mr. Besore for delivery to the printer.

On motion duly made, seconded and unanimously carried, the meeting adjourned until July 22, 1947, immediately following the meeting of the Constitutional Convention, scheduled for 10:00 A.M.

COMMITTEE ON THE LEGISLATIVE

Monday, July 21, 1947

CONFERENCE NOTES

Consideration of the revised tentative draft of the Legislative Article, prepared for the Committee by Mr. Charles deF. Besore:

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

Section I, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Strike the words: "A vacancy in the office of Senator or Assemblyman" and insert the word "Vacancies" in their place. Change the word "term" on the next to the last line of the paragraph to the word "terms."

Paragraph 4:

In the fourth line, after the word "Assembly," eliminate ", specifying the matter or matters to be considered therat,". Also, strike the entire last sentence of this paragraph, beginning "In either event, * * * *."

Section II, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Section III, paragraph 1:

Approved without change.

Section IV, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Approved without change.

Paragraph 4:

Approved without change.

Paragraph 5:

Approved without change.

Paragraph 6:

To be retained, except that the words "the house of its origin" in the fourth line shall be stricken and the words "either house" substituted therefor; the words "is to be," seventh line, shall be stricken and the words "shall be" substituted therefor.

Paragraph 7:

To be retained as written, except that the word "by" shall be substituted for the word "in" in line 8.

Paragraph 8:

Approved without change.

(The meeting adjourned until 2:00 P.M.)

* * *

(The meeting reconvened at 2:00 P. M.)

Section V, paragraph 1:

Line 4, insert the words "of profit," after the word "position"; the comma after the word "term" on line 6 be stricken and a period substituted; strike out the word "but" on line 6 and start the word "the" with a capital "T." Also, on line 7, the words "as Governor or" are to be inserted after the word "person."

Paragraph 2:

To be retained as written, except that the words "in the performance of quasi-legislative functions, or to aid or assist," on lines 4 and 5 be stricken.

Paragraph 3:

Approved without change.

Paragraph 4:

Approved without change.

Paragraph 5:

Approved without change.

Section VI, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Retained without change, except that the word "the" on line 7 shall be eliminated and the word "a" substituted; the word "simple" shall be inserted after the word "fee" on the seventh line; and the word "simple" shall be inserted after the word "fee" on the eighth line.

Section VII, paragraph 1:

Approved without change.

Paragraph 2 (page 13-2a):

Shall be retained and in bold type above it shall be inserted the words "ALTERNATIVE A."

Paragraph 2 (page 13-2b)

Shall be retained and in bold type above it shall be inserted the words "ALTERNATIVE B." Line 8: Underline lines 8, 9, 10, and 11 and the word "provided" on line 12. Underline "and games of chance" on line 21; also underline lines 22 and 23.

Paragraph 3:

Approved without change.

Paragraph 4:

Approved without change.

Paragraph 5:

Approved without change.

Paragraph 6:

Approved without change.

Paragraph 7:

Approved without change.

Paragraph 8:

Approved without change.

Paragraph 9:

Approved without change.

Paragraph 10:

Approved without change.

Paragraph 11:

Approved, with the exception that the words "by any" shall be inserted after the word "or" in line 3.

Section VIII, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

The Committee voted that the draft of the suggested addition to the Executive Article, in substitution for the last sentence of Section II, paragraph 13, be adopted, with the exception that an additional clause be inserted to provide that, in the event of the failure of a quorum of the Legislature to attend on the forty-fifth day, the bill or bills shall not become law.¹

It was agreed that the proposal to be added to the Article on Public Officers, relating to the State Auditor, be recommended to the appropriate Committee, with the word "five" being inserted after the word "of" in line 3; also, that the word "to" shall be substituted for "shall" in line 7.¹

It was agreed that the provision relating to the holding of general elections, as drafted, be recommended to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

Recessed until immediately after the session of the Convention to be held tomorrow morning, July 22, 1947.

¹ For text, see minutes of the executive session of July 29, 1947.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 22, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 11:30 A.M. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Leonard, Morrissey and Sanford. (Mr. Charles deF. Besore, committee technician was also present.)

Absent: Lance, Lewis and Proctor.

Printed copies of the Tentative Article were delivered to the Chairman and distributed among the members. The proper authorities were requested to see that distribution is made to the public in preparation for the discussion at the public hearing to be held on Monday, July 28, 1947, at 10:00 A.M., in the Gymnasium, Rutgers University, The State University of New Jersey, New Brunswick.

A motion was made and seconded that the Chairman be empowered to appoint a sub-committee to draft the Report of the Committee on the Legislative to be submitted to the Constitutional Convention. The motion was unanimously carried.

A motion was made, seconded and unanimously carried that the sub-committee shall consist of three members, one of whom shall be the Chairman, Senator O'Mara. The Chairman thereupon appointed Mr. Leon Leonard and Mr. Dominic A. Cavicchia as the other two members of the sub-committee. It was agreed that the sub-committee should meet, together with Mr. Charles deF. Besore, on Friday, July 25, 1947, at the Senate Caucus Room, State House, Trenton, for the purpose of drafting the Committee's Report to the Constitutional Convention.

On motion made, seconded and unanimously adopted, the meeting adjourned until 10:00 A.M., Monday, July 28, 1947, at the Gymnasium, Rutgers University, The State University of New Jersey, New Brunswick.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Monday, July 28, 1947

(Morning session)

(The session began at 10:00 A. M.)

PRESENT: Camp, Cavicchia, Hacker, Jorgensen, Lance, Lewis, Morrissey, O'Mara, Proctor and Sanford.

Chairman Edward J. O'Mara presided.

MR. EDWARD J. O'MARA, CHAIRMAN: Ladies and gentlemen: As this meeting of the Committee on the Legislative opens, I think it would be fitting to record the fact that the Secretary of the Committee, Mr. Leon Leonard, is absent today because of the sudden death of his father yesterday. I think we ought to note in the minutes of the Committee the sorrow of the members of the Committee at the bereavement that is borne on Mr. Leonard, and I will entertain a motion to that effect.

COMMITTEE MEMBER: I move it.

COMMITTEE MEMBER: Second it.

CHAIRMAN: Seconded. All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: I call as the first witness before the Committee this morning the Attorney-General, Walter Van Riper.

MR. WALTER D. VAN RIPER: Mr. Chairman and members of the Committee:

Thank you very much for the opportunity of appearing here this morning and also for your courtesy in giving me the opportunity to talk early in the proceedings and then allowing me to leave.

I had great reluctance in deciding to appear this morning because I am fully appreciative of the time which the members of the Committee are giving to this work, and of the numerous individuals, organizations, etc., who are attempting to give you advice, and I do not want to put myself in that category. I did feel, however, after extensive consideration, that I owed it to myself and that I owed it to this Committee to discuss with you for a few minutes, if I may, the Alternative "B" proposition which you have with reference to the gambling situation.¹

Let me say right at the start, Mr. Chairman and members of the

¹ Alternates "A" and "B" relating to gambling appear in the Tentative Draft of the Legislative Article prepared by the Committee on the Legislative. The draft is reproduced in Volume II.

Committee, that I intend to discuss this from a practical viewpoint and not from a moral viewpoint. Perhaps I would be prouder of myself if I did discuss it from a moral viewpoint, but I am not. I am not discussing it from the viewpoint of opposition to any and all types of gambling. Lest I be criticized afterwards, I want to say right at the start that I have no objection; in fact, I do on occasion go to a race-track, as you know, Mr. Chairman—

CHAIRMAN: How would I know that, Mr. Van Riper? You mean from hearsay?

(Laughter)

MR. VAN RIPER: And as you also know from the same hearsay, I come away always regretful, but that does not make me fundamentally opposed to it.

I am not just sure what the Committee has in mind or what the Committee did have in mind in the preparation of this Alternative. I had the impression from reading the newspaper accounts of the discussions which took place before the Committee, that the Committee intended to authorize a vote upon the question as to whether or not bingo should be permitted, and I want to say to you very frankly that if this Alternative provided only for that, I would not be here this morning appearing in opposition to it. If we wanted to authorize the people to vote upon the question as to whether or not we want to authorize bingo to be played, then I see no objection to that authorization, and I certainly would not oppose it. But if we want to do that, why not say so? If what we want to do is to authorize the legalization of bingo under the auspices of religious organizations, namely churches, let's say so in so many words. It seems to me that it is just as easy—it may not be too easy, but it is just as easy—for this Committee and certainly for this Convention to define bingo as it will be for the Legislature next January or the January thereafter to define it. A resolution, as you members of the Legislature, I am sure, recall, was introduced in the Legislature by Assemblyman Jones either last year or the year before, for a constitutional amendment permitting bingo, and that defined it.

But I assume that the members of the Committee certainly must be familiar with the fact that the wording of Alternative "B" is not limited to bingo by any means, despite the fact that that is the general impression which has gotten out. As you know, the words in italics (*referring to the text*) say that the Legislature may authorize and regulate the conduct of games of chance. Now, what are games of chance? Games of chance, certainly as the lawyer members of this Committee know, and I think as the layman members realize, have been defined by the courts of practically every state in the Union as being any sort of a gambling device, and the more of a gambling device it is, the more of a game of chance it is.

Now, I am perfectly willing to trust the Legislature. I know the question is raised, "Are you willing to trust the Legislature?" I can answer that unhesitatingly, "Yes, I am; I am perfectly willing to trust the Legislature." However, as I see it, if this Alternative is adopted into the Constitution, the Legislature will be obligated to carry out some of its provisions. As I see it, the Legislature could not for a moment attempt to deny that the people by their direct vote have specifically said to the members of the Legislature, "We want you to authorize these things." Authorize what things? Well, the amendment would say, "Authorize games of chance." Now, who is there to say that when I voted for that amendment, if I voted for it—I am speaking now in the abstract of thousands of people who voted for it—when those people voted for it, they did not have in mind the legalization of off-the-track betting on horses? Who is there to say that when people voted for that, they did not have in mind the legalization of roulette wheels? Who is there to say that when people voted for that, they did not have in mind the legalization of crap games and all else that goes with organized, legalized gambling? And my objection, therefore, comes down to the practical viewpoint that I believe that this Alternative, as it is now worded, opens the door, not a little bit but very widely, for legalized, commercial, wide-open gambling.

Not only that, but I believe that with the present verbiage which the Article contains, it lends itself very much to deceit, to fraud, to hypocrisy, and to every attempt to evade the real intent which I am sure the members of this Committee have at this very moment and which they had when they prepared the Alternative. For instance, it limits it to the "bona fide"—and incidentally, you and I, I think, know what the words "bona fide" mean—but who is going to say what is a "bona fide" organization a year from now, or five years from now, or ten years from now. Someone is going to have to pass upon that. Unfortunately, it won't be the members of this Committee, with your intelligence and your high-minded purpose. Who it will be, I don't know. You don't know. It will be someone who has been designated by the Legislature, by the Governor, for that purpose. He is doing to have to pass upon the meaning of the words "bona fide," and I think they do not need any explanation to this Committee. I certainly could not explain them any better than you. However, you appreciate the fact that they will be words that will be subject to all kinds of interpretations.

Now, "bona fide" what? Religious organizations? Well, that might not be so difficult. That probably would not be so much the subject of a racket as all of the other organizations would be subjected to, but again I say, if we want to talk about religious organizations, we are talking about churches, aren't we? Well, let's say so

in so many words. Let's use the word "church," an established church as is now in existence in this State. That covers everything in that regard, so why use a word susceptible to various meanings afterwards? But I think that is the least difficult of all of the organizations we talk about.

Then, we talk about charitable, fraternal, and veterans' organizations. Well now, I ask you in all good conscience, what is a charitable organization? Of course, you and I know some outstanding charitable organizations. I think the Rockefeller Foundation is a charitable organization, but I don't think that anyone thinks that the Rockefeller Foundation is going to seek a permit to go into the gambling business. But how easy it will be to establish a charitable organization, how easy it would be for you or me or anyone of a half dozen of us, or anyone of us almost alone, to organize an organization and make a charitable organization out of it. What do you need to have a charitable organization? I don't know.

Two or three nights ago the *Newark News*, in writing a biographical sketch of Joe Fay when he left the State for a while, used this expression—that Fay and Fred Romp organized the Joseph F. Fay Association which distributed hundreds of Christmas baskets and engaged in charitable activities. Well, does that make it a charitable organization? Who can say that it doesn't? Will the Commissioner of Gambling or the Commissioner of Betting, or whatever you might want to call him, or the Commission, whichever it may be—will the individual or the group which has charge of licensing charitable organizations to conduct gambling under this provision say five years from now, or ten years from now, that an organization which does those things, namely, which gives away Christmas baskets, is or is not a charitable organization and, therefore, entitled to a license? Isn't it fair to assume that half of the political club in the State—and I belong to a political club, and some of you gentlemen here belong, too—none of them have any money, as we all know, except what you and I and some other office holders donate to them once in a while. They all need money badly. Isn't it fair to assume that the first thing you know, every political club in the State will be a charitable organization? They will be giving away Christmas baskets, and they will be giving away shoes to the poor and the needy, and so forth, which they do now when they can get the money to do it. Now, isn't that simply going to open the door to a racket, and isn't it natural that it would open the door to it?

I don't have to draw the attention of the members of this Committee, I am sure, to the amount of money that is involved in wide open gambling. Every day, for the last 30 or 40 days, there has been an average of a million dollars a day bet at the Monmouth

track, perfectly properly and perfectly legally. I am sure—I don't know how much money has been bet on the horses in this State off the track; no one will ever know about that because you can't find that out—but I am sure from the information which I have and which my office has been gathering over a period of years, that there is that much money available for off-the-track betting each day, not only during the season—there are seasons—but each day during the year, because there are races run practically every day during the year. Now is it the intention to authorize that kind of off-the-track betting?

I frankly say to you that I am at a loss to see how the Legislature, if this Alternative is adopted, I don't understand how the Legislature can refuse to authorize off-the-track betting. A lot of people want it and look upon it from a practical viewpoint. If we look upon it from a moral viewpoint, as some of my friends undoubtedly do who will appear here this morning, then, of course, we are against it all. I am not in that category. But if we look upon it from a social and economic and a practical viewpoint, how are we going to say that one type of gambling is all right and another type of gambling is not all right?

I don't want to prolong this discussion before the Committee. It may be that some of the members would want to question me on some phases of my testimony, which I would be very glad for them to do, but I do want to make the record clear again that I would not for a moment object if we had an amendment which clearly said in so many words that the Legislature may authorize the conduct of bingo, describing it as games by established churches or even by religious organizations. But I honestly and sincerely believe, and I am sure that upon thought and analysis the members of this Committee must come to the conclusion, that the adoption of this Alternative with the verbiage which is in here now, will be nothing more or less than the opening of the doors for wide-open, legalized, commercialized gambling.

CHAIRMAN: Does any member of the Committee desire to ask the Attorney-General any questions? If they will raise their hands, the microphone will be placed before them. Judge Lance.

MR. WESLEY L. LANCE: This question, perhaps, is within the province of another Committee, but nevertheless it is on this point. At present we have Alternative "A" and Alternative "B." As I understand it, there would be two ways these Alternatives could be voted upon: one is that the new Constitution must carry; otherwise, both Alternatives "A" and "B" drop out of the window. The other way, No. 2, regardless of what happens to the new Constitution as a whole, "A" and "B" might be considered as separate amendments, which boils down to the point: Does a Constitutional

Convention have the power to submit separate amendments to the people, which may pass or fail regardless of what happens to the main document? Have you given any thought to the second proposition?

MR. VAN RIPER: Judge Lance, I have. Not only have I given some thought to it but my office staff has given some thought to it—considerable thought. I did not discuss that phase of it. I purposely refrained from discussing it. First of all, I did not think that was a matter of immediate moment this morning, and I did not want to use an argument that that couldn't be submitted that way as an attempt to kill the proposition. I wanted to discuss it on its merits.

I am not prepared at the moment to give a definite, official opinion as the Attorney-General upon your question as to whether or not it can be so submitted, but I will say this to you very frankly,—that it gives us in our office considerable concern as to whether or not it is possible so to do it. I am not trying to evade it and I am not trying to get away from it, but I would like to have further discussion on it, I would like to have further research on it, and I would like to have further conference on it, for we are at the moment considerably concerned about it. We have not been asked for an opinion, but we have naturally been considering it.

MR. LANCE: Are you concerned as to these Alternatives? In the event that the main document passes, are you concerned about the Alternatives?

MR. VAN RIPER: You mean as to the mechanics of submitting it?

MR. LANCE: Yes.

MR. VAN RIPER: Well, here's a proposition that just comes to my mind. You have a Constitution. Now, I assume for the sake of argument at the moment, that on this question you have nothing in it. You just have a straight, streamlined Constitution, so to speak. There would be nothing in it on your gambling—it would not make any difference if it was gambling or not. Then you have Alternative "A" and Alternative "B." Now, you have a million votes cast, we will say. A million people vote *pro* and *con* the Constitution. 550,000 vote for it, and 450,000 against it. If that were so, of course the Constitution would be adopted by 100,000 votes. I think it is fair to assume, and I think that you gentlemen who have had experience with practical election matters know, that everyone does not vote for every question that is on the ballot. Suppose you had a million votes cast for and against the Constitution proper, and you had only 800,000 votes cast on one of these Alternatives. In order to adopt the Constitution with a million votes cast, you would have to have 500,000 votes for it, wouldn't you?

CHAIRMAN: More than 500,000 votes.

MR. VAN RIPER: We will forget that one, Senator. That can be supplied in the case of an emergency. For round figures, let's just take 500,000. Now, suppose you only had 800,000 people who voted on the amendment, and you had 410,000 for it. Does that adopt the amendment? It is not a majority of those voting.

CHAIRMAN: It is a majority of those voting on that proposition, isn't it?

MR. VAN RIPER: Well, does that adopt it? I am not advancing an opinion on it, Senator, I am just raising the question. Judge Lance asked me if I was concerned about it. I am just raising that as one of the possibilities.

MR. LANCE: The point you raise is a legal question. Now, the point I raise is another question in addition to that. Unfortunately, it appears that there are more people interested for or against this clause than anything else in our whole Article.

Suppose that some people are very vigorously in favor of what they call charitable bingo, and in order to get charitable bingo, there is just one way to do the job—that is to pass the new Constitution and then pass Alternative "B." They are going to vote for the new Constitution regardless of whether they think it is good or bad. On the other hand, a lot of people are very vigorous against opening the door, and they sit down and figure: "Well, now, if we lick the new Constitution, that is the end of that; then Alternatives 'A' or 'B' will never come into question." My concern is whether or not these Alternatives will not influence people voting on the main document unless we submit them as separate amendments.

MR. VAN RIPER: I see your point, Judge. Well, isn't it true—I mean, aren't we agreed on this fact: that if the Constitution itself, assuming you submit a new Constitution with nothing in it about gambling and then submit "A" and "B" on the side, and if the Constitution itself were defeated, even though Proposition "A", we will say, got a majority of the votes cast, it couldn't become a part of the present Constitution, could it?

CHAIRMAN: Well, may I interject a thought right at that point? Alternative "A" is, as you know, the existing anti-gambling clause in the present Constitution. I think what is in Judge Lance's mind is this—that if Alternative "A" and Alternative "B" were put out as a referendum, it might create an artificial vote in favor of the adoption of the new Constitution because those who favor Alternative "A" would be free to vote for or against the new Constitution because that identical clause is in the existing Constitution, whereas those who favored Alternative "B," if the only method of making Alternative "B" effective were to have it as a part of the new Constitution, would have to vote in favor of the new Consti-

tution although they might favor Alternative "B" and be against the Constitution generally. Therefore, Judge Lance's query is directed, I think, to this proposition: In your opinion, would it be possible to so frame the wording of the referendum on "A" and "B", assuming that the Convention adopts the recommendation of the Committee that that be done, so that in effect either "A" or "B" would be written into the new Constitution if it were adopted, or if the new Constitution were rejected, of course, "A" would stand but "B", if it carried, could be considered an amendment to the present Constitution.

Now, I can supplement that a little bit, I think, just from memory as to what the act provides. As I recall it, it gives to the Convention the right to submit parts of a Constitution. If the Convention merely submitted parts to a Constitution and not a complete Constitution, it seems to me that those parts must be in effect amendments to the existing Constitution. I might be right or I might be wrong on that, but I think that that is the general subject of Judge Lance's thinking. Is that right, Judge?

MR. LANCE: Chairman O'Mara has expressed just exactly what I had in mind.

MR. VAN RIPER: I understand that point very clearly. One would have to do as Senator O'Mara explained, but that brings us right face to face, as I see it, Senator, with another difficulty. The act talks about the submission of this Constitution as a whole *or* in parts.

MR. LANCE: That is right.

MR. VAN RIPER: Does that mean that we can submit it both ways?

MR. LANCE: I don't know.

MR. VAN RIPER: In other words, is the Convention restricted to a whole Constitution as a whole, or is it restricted to a Constitution in parts? I am not making an argument now, on either side. It is another one of the problems that bother us. We considered that in the office.

CHAIRMAN: While you are on that, Mr. Attorney-General, might I ask your general thoughts, if you care to give them, on whether or not a Convention such as this, representing the sovereign people of the State, is really bound by any restrictions imposed by the Legislature. Now, I do not have in mind the question of Assembly districts because that, I think, has been disposed of because of practical difficulties—

MR. LANCE: Or senatorial representation.

CHAIRMAN: Or senatorial representation.

MR. VAN RIPER: As you know, I wrote this Committee a letter to give an official opinion on the question of Assembly districts,

and I think I said in there that, generally speaking, the Convention was the people assembled and that they could do as they saw fit except where they were restricted by a specific instruction from the people, and I thought that applied in the case of the Assembly districts. Now, therefore, we come again to the question: Have the people specifically instructed the Convention here when they said to submit in whole in or parts?

In that very connection, Senator, I know that you have given it a lot of thought, and I certainly have great respect for your legal opinion as I do for that of other lawyers on the Committee. I assume that you will consider it further. I call your attention to the fact that in the very preamble of this act, it talks a great deal about in whole or in parts, and conforming it to the present needs, and so forth and so on. There is enough in it in my judgment to give us considerable concern on that point. Now, what would happen, as an actual fact, if the Convention did decide to do it that way and did it, even though you and I, as lawyers, might think that it was not strictly in conformity with the authority which we have? How far the courts would go in stopping the Secretary of State from putting it on the ballot—which, I suppose, would be the method adopted by those who wanted to oppose it—I don't know, and I don't think anyone knows.

CHAIRMAN: Wouldn't this be true? Getting over the hurdle of whether or not the question could be submitted on the ballot, no matter what the restrictions on the Convention that the Legislature intended to impose, no matter how those restrictions were approved at the referendum in June which authorized the calling of the Convention, if the Convention did in fact violate some of those restrictions and then the people in their vote in November adopted the Constitution in the manner in which it was submitted, would not that in your opinion constitute a ratification by the sovereign people of any divergence from these so-called restrictions?

MR. VAN RIPER: In my opinion, if you get by Election Day and the Constitution is adopted by the majority of the voters on Election Day, the courts would sustain it. The difficulty would be between the time you adjourned your labors here and Election Day.

CHAIRMAN: Exactly. May I ask one other question, Mr. Attorney-General? I don't want to preempt too much time, but I want to know that I understand your position clearly on the main proposition. Do you favor a self-executing clause in the Constitution which would in words authorize existing churches to conduct bingo without any regulation whatever by the Legislature?

MR. VAN RIPER: I don't think you could do that. I think you have to have some regulative bodies and regulative authorities. I favor the Legislature being authorized to legalize that.

CHAIRMAN: Senator Lewis.

MR. ARTHUR W. LEWIS: General, in the event that it should be decided to submit this question and the one or more Alternatives, would you favor submitting the questions: A, no gambling at all; B, open gambling; C, modified as now in the present Constitution; or D, modified and extended to include specific games of chance?

MR. VAN RIPER: Senator, I don't advocate that, but I certainly would have no objection to it. I think the fundamental thing that the people are certainly entitled to is to have whatever is submitted, submitted honestly in words that are subject to only one interpretation, that are not ambiguous and not subject to being misconstrued thereafter.

MR. LANCE: But if you are going to have Alternatives, should not the people, in your opinion, have an opportunity to vote on all of the possible alternatives comprehending this question?

MR. VAN RIPER: I certainly can't oppose giving the people an opportunity to pass upon these questions. No, I certainly agree that that is fair.

MR. LEWIS: In your opinion, General, if you submit a Constitution without any reference to gambling and then submit alternative provisions, if the Constitution should be adopted, it would make open gambling possible if the Legislature saw fit to do so?

MR. VAN RIPER: You mean, assuming that the Alternatives were both beaten?

MR. LEWIS: Assuming that the Constitution passed and the Alternatives were not passed?

MR. VAN RIPER: Yes, certainly. Then you would have no constitutional inhibition at all.

MR. LEWIS: Then if you had one or more Alternatives, it may be impossible to get a majority of the people to vote for a particular Alternative?

MR. VAN RIPER: Along the lines that I expressed a moment ago, if you have a million people voting on the main question and only 800,000 of them vote on the Alternative, you run into the question of whether or not 410,000 votes adopts the Alternative.

MR. LEWIS: The language in the bill calling for this Convention, and I quote from the bill—

MR. VAN RIPER: Whereabouts?

MR. LEWIS: Section 28, the last clause of that section, which reads:

“And if one or more parts of a constitution are submitted to the people, as aforesaid, and a majority of all votes cast for and against the adoption of any part shall be in favor of its adoption, then each part so approved shall become a part of the constitution of this State, according to its terms.”

MR. VAN RIPER: That would seem to cover it.

MR. LEWIS: In other words, then, such alternate proposal would become part of the present Constitution, assuming that the Constitution as a whole was not adopted?

MR. VAN RIPER: No, I don't go that far. No. I don't know. Then you run into another question. You run into the question of whether or not you can amend the present Constitution by the adoption of one of these parts, don't you?

MR. LEWIS: Isn't that a clear interpretation of the language as used in this bill?

MR. VAN RIPER: Well, Senator, if it is, then isn't it also a clear interpretation of the language that you must submit this Constitution as a whole or in parts?

MR. LEWIS: As I read the bill, it is unmistakably clear that this Convention may frame a Constitution to be submitted as a whole to the people for its adoption or rejection.

MR. VAN RIPER: Yes.

MR. LEWIS: Or—and that is a disjunctive; it is not a conjunctive—or it may frame one or more parts of the Constitution, each to be submitted to the people, and they may adopt or reject any part. If the Convention so determines, it may also frame one or more parts to be submitted in the alternative, in order that the people may adopt one—adopt any of the alternatives, or reject any of them. Now, therefore, you can only submit the Constitution as a whole or in parts, and if in parts, you may have alternative parts, but I see nothing in this bill which permits the question to go to the people as a whole, and then alternatives as to the whole.

MR. VAN RIPER: Well, Senator, we are getting closer together in our thinking. I am not prepared, as I indicated to Senator O'Mara a few minutes ago, to make a definite statement that that is my definite opinion. But I am very frank to say to you that in our discussions in the office, in discussing that, that is to a very large extent the way our thinking runs. You can't do both, if you are going to follow the act. Of course, if you don't follow the act, and you take the bit in your teeth, so to speak, and just proceed, that is another thing. But if you are going to follow the act, we lean very much on the theory that you will have to do either one or the other.

MR. LEWIS: But if we do not follow the act, would it not be possible for a bill of injunction to be gotten out between September 12 and the date of election, prohibiting the Secretary of State certifying the question?

MR. VAN RIPER: Well, I assume that those who wanted to oppose the Constitution would proceed that way. I assume that would be the way to do it. In other words, they can enjoin the administrative machinery from functioning.

MR. LEWIS: In other words, it would permit possible litigation before Election Day on this question if the delegates do not conform with the mandate in this Senate Bill 100?

MR. VAN RIPER: It would certainly open the doors to litigation.

CHAIRMAN: Any further questions?

MR. CHRISTIAN J. JORGENSEN: Mr. Attorney-General, may we have the benefit of your opinion as to the proper method of handling this particular issue?

MR. VAN RIPER: How do you mean? Putting it on the ballot, or what?

MR. JORGENSEN: No. I am concerned primarily with whether or not you have given any thought to the submission of any prohibition or permission on the gambling question in the Constitution?

MR. VAN RIPER: Oh, yes, I have given it some thought. As far as I am personally concerned, I say I have no objection to submitting to the people anything that you want to have the people vote on, providing it is clearly and definitely stated in language that is not ambiguous and not subject to several interpretations.

In these alternatives "A" and "B", for instance, which I have tried to discuss here this morning, which in my judgment means wide-open, legalized gambling—if that is what you want, why not say so in so many words?

MR. JORGENSEN: What I mean, Attorney-General, is whether or not you feel that as a matter of good constitutional law there should be any provision either permitting or prohibiting gambling in the fundamental law?

MR. VAN RIPER: I am very glad that you raised that question. I know there are those, many of them, some of them distinguished delegates of this Convention, who on occasion have spoken to me about it and said: "Why should there be anything in the Constitution about gambling? There isn't anything in there about murder, or larceny, or anything like that?" Well, I think it's an entirely different situation. I don't look at this gambling thing, as I say, from a moral viewpoint. I don't think there is any comparison between gambling and murder or assault and battery or larceny, or any one of the hundred other common law crimes that have been handed down to us. One group strictly involves the moral situation and, in my judgment, the other group does not. That is number one.

Number two. If I were drawing the constitution for a brand new state that never had one before—it was just coming into being—I don't think that I would put anything in the constitution about gambling. For all of your lifetime, and all of my lifetime, and even

a little longer than your lifetime, assuming that some of you are a little younger than I am, we have had in our Constitution a provision against gambling. I think that to take it out all of a sudden would be too much of a green light to every kind of abuse of the possibilities that exist when you don't have any regulations in the Constitution.

MR. JORGENSEN: As a matter of fact, Attorney-General, do we not have the same statutory laws in existence as the result of there being no provision with respect to gambling in the Constitution? Would it not take some actual, specific act of the Legislature in order to open the door in any respect?

MR. VAN RIPER: That part of it is true. Then there is another reason, another sound objection, to my mind, for not taking it out of the Constitution altogether, and that is this. We are dealing here with something that is not just ordinary business. We are dealing here with a type of business that has the potentiality of more money, of easy money, with less investment than any other investment in the world. I don't think there is any question about that at all. As I said a few moment ago, if we assume that about a million dollars a day is bet at one track alone, if that were done in off-track betting, and ten per cent were taken out, that is about \$100,000 a day, and for every business day in the year that is about \$30,000,000 as I figure it, although it is pretty difficult when I got up that far. Anyway, that's a lot of money; that's a lot of money to be involved.

Now, if you are going to have every political organization become charitable clubs—maybe every one of them won't, but a lot of them will—if you are going to have a lot of synthetic organizations make themselves subject to license privileges, I don't think that it is quite fair to the honorable men and women who want to go to the Legislature and who want to do a decent job, to have them at every election subjected to the influences that will be brought about as the result of that kind of easy money being spent in campaigns—and it will certainly be spent, because the history of political activities shows that. That is another reason why I would keep some kind of prohibition in the Constitution.

MR. JORGENSEN: I appreciate your reasoning, Attorney-General, but I am wondering whether or not we, as a Committee, in submitting any provisions such as Alternative "B", are doing the proper thing when we dignify certain types of gambling?

MR. VAN RIPER: I don't know. That's another problem—whether or not you want to dignify it. I guess the only answer to that is that you will have to look at it from a practical standpoint. You have a practical situation here. Now, what are you going to do about it?

MR. JORGENSEN: I take it, then, that the sum and substance of your feeling is—I take it that it is unofficial feeling that you are expressing?

MR. VAN RIPER: Oh, yes.

MR. JORGENSEN: Your feeling, in any event, is that it should not be left to the Legislature to control entirely?

MR. VAN RIPER: Not without some constitutional inhibition.

MR. LEWIS: Attorney-General, would you favor defining what particular games may be resorted to legally, or defining the type or classes of people that may engage in such games legally, or both?

MR. VAN RIPER: I would. I certainly would. I think the people who are qualified to vote on this thing are entitled to have it. I can see under this, tentatively, thousands of fine women who love to go once a week—and probably for many of them that is the only recreation they have—they go up to some community hall and play bingo. I can see thousands of them waiting for this Alternative “B” under the belief that it would give them bingo, as it probably will, without realizing that it will open the door to wide-open gambling, which it will.

Just as an evidence of how intelligent people can misunderstand and create a false impression, an erroneous impression, about things, I call your attention to an editorial in yesterday’s *New York Herald Tribune*, which is supposed to be an intelligent newspaper. It talks about this Alternative “B” and it says “the other,” meaning Alternative “B”, would permit also regulated gambling of the bingo type. Now, of course, it doesn’t say anything about the bingo type. It doesn’t say anything about any type. It says games of chance. The more chance there is, the more susceptible it is to gambling.

MR. LEWIS: What do you think of a proposal such as this—permit in the Constitution what is presently permitted in our Constitution, and prohibit all lotteries, commercial and professional gambling of all kinds, and then give to the Legislature the rights to authorize specific kinds of games of chance, subject, however, to local option, so that the local municipalities would ultimately have the final determination as to whether or not such games of chance should be played in the municipalities?

MR. VAN RIPER: Of course, we might differ on verbiage when it comes to putting it on paper.

MR. LEWIS: I am speaking now of substance.

MR. VAN RIPER: As to substance, I think that is a very honest way of putting it. Very honest.

CHAIRMAN: Thank you, Attorney-General . . . Any further questions? Judge Lance.

MR. LANCE: Attorney-General, doesn’t that mean that some

municipalities might on option be wide open and we would have a wide variety of situations in this great State of ours?

MR. VAN RIPER: Here we get back to verbiage again. I didn't understand the Senator's question to do that. Rather I understood the Senator's question to mean to keep the regulation of certain specified types within the Legislature.

MR. LEWIS: That's right. I do not wish to be misunderstood on this. My thought is to permit such gambling as the Constitution now permits, and specifically prohibit all lotteries, commercial and professional gambling of all kinds; permit the Legislature to authorize specific games of chance, the Legislature to name specifically the types of gambling that it authorizes, and subject further to local option so that the municipality can then determine whether or not those specific games of chance should be allowed locally.

MR. VAN RIPER: I thought I understood you correctly, Senator, but now, do you mean—let me get this clear—do you mean that the Constitution should define the class of games of chance, or should the Legislature? If you get back in the Legislature, you are going to subject every legislator every Election Day to the same political slush fund.

MR. LEWIS: I would rather see it defined in the Constitution. Then you would be safe in that regard.

MR. VAN RIPER: So would I.

CHAIRMAN: Any further questions?

(Silence)

CHAIRMAN: Are you through, Attorney-General?

MR. VAN RIPER: Yes, I am, if there are no further questions. Thank you very much for affording me the opportunity of appearing here this morning.

CHAIRMAN: Thank you very much for appearing here.

We will now hear from our next witness, Judge John J. Rafferty.

MR. JOHN J. RAFFERTY: Mr. Chairman and members of the Committee:

I am very happy to have this opportunity to be with you this morning to speak upon the proposal which I have submitted. Several members of the Committee have paid me the very great compliment of saying that they do not understand my proposal.

CHAIRMAN: This is Proposal No. 41, Judge? Isn't that correct?

MR. RAFFERTY: Yes, Senator. Of course, to a lawyer that is a compliment. This proposal which I submit is one which deals with the power of the Legislature to legislate as to the disposition of public monies.

The present Constitution provides that monies may not be paid, as you all know, for the benefit of any person, corporation, etc.,

unless it be for purposes specified within the provisions of the Constitution as a whole.

Now, I have in mind the large number of charitable institutions in the State which cater to the corporal necessities of a large section of our people and which are not subsidized by the State in any way at all. But, because of the increase in the number of persons seeking the benefits available in these institutions and because of the use, indirectly, by the State of some of these institutions, it was thought wise to ask this Convention to consider empowering the Legislature to enact laws which would permit the payment of public monies in such cases as the Legislature might deem proper.

The language of my proposal is as follows (*reading*):

"Nothing in this Constitution shall prevent the Legislature from providing as it may deem proper, by general laws, for the aid, care and support of the needy, for social security and against the hazards of unemployment, sickness and old age, for the education and support of persons who are blind, deaf, dumb, physically handicapped, or delinquent, for health and welfare services for children of the needy, for the aid, care and support of neglected and dependent children and of the needy, sick or aged, through agencies or institutions other than state or public agencies and institutions, but authorized by a state agency, by payments made therefor on a per capita basis."

Now, this substantially is taken from the New York Constitution. In New York it is in two parts, one dealing with the State and the other with subordinate divisions of the State.

As to the State, Article 7, Section 9 of the New York Constitution, says:

"Subject to the limitations on indebtedness and taxation, nothing in this Constitution contained shall prevent the legislature from providing for the aid, care and support of the needy directly or through subdivisions of the State, or for the protection by insurance or otherwise, against the hazards of unemployment, sickness and old age, or for the education, support of the blind, the deaf, dumb, physically handicapped and juvenile delinquents as it may deem proper, or for health and welfare services for all children, either directly or through subdivisions of the State, including school districts, or for the aid, care and support of the neglected and dependent children and of the needy sick, through agencies and institutions authorized by the State Board of Social Welfare, the State Department having the power of inspection thereof, by payments made on a per capita basis directly or through the subdivisions of the State. The enumeration of legislative powers in this paragraph shall not be taken to diminish any part of the legislation heretofore existing."

Article 8, Section 1, is substantially the same, referring to municipalities. There is some difference in language, but the objective is the same. That section says particularly:

"Payments by counties, cities, or towns, for charitable, eleemosynary, correctional or reformatory institutions and agencies, wholly or partly under private control, for care, support and maintenance may be authorized, but shall not be required by the legislature. No such payments shall be made for any person cared for by any such institution or agency, nor for a child placed in a family home who is not received or maintained therein pursuant to the rules established by the State Board of Social Welfare, or other state department having the power of inspection thereof."

You will note from a comparison of these proposals, which I made, and the New York State Constitution, that the matter is given to the Legislature to consider in the light of the needs of the day, and to give such remedial legislation as the facts would indicate are justifiable and proper. You will note that the aid thus given must be by general law, and the supervision of the administration of that law lies with the appropriate state agency. No money may be given to any charitable corporation except that that particular corporation has been authorized by a state agency to receive those persons who are the subject of the charity of the State and of the people, and then only on a per capita basis.

Here is a clear-cut authorization to the Legislature to enact legislation to meet situations such as I shall indicate in a few minutes.

It is deemed by those having charge of the administration of the welfare laws of the State that they may not presently commit or bring into a charitable organization any state ward or any person who receives state funds for his or her maintenance and care, because that is considered to be a violation of the existing constitutional provision against the payment of public funds for any person, agency, or corporation, etc.

Now, charitable institutions, I need not tell you members of the Committee, are necessary and an integral part of our life. Charitable organizations catered to the needs and necessities of mankind long before the State undertook it to any degree whatsoever. It is within our own lifetime that the state hospitals, for instance, were limited to the State Hospital for the Insane, epileptics, and that special kind of care.

It was not until, perhaps, 30 years ago that the legislators and the people generally had a broader social viewpoint on the matter of indigents and those who qualified and who are entitled to the sympathetic care and consideration of their neighbors and of their State. The first effort, perhaps, made in a major way was the Workmen's Compensation Law. Succeeding that were the many welfare laws which were passed, until today the welfare laws occupy a very large portion of the body of our statute law and a very large portion of our energies as citizens and a very large portion of the public funds.

This proposal of mine would also limit the payments to be made to charitable corporations to only the reasonable cost and care and maintenance of the person who was the subject of this law and of the social laws of this State. It would in no wise permit expenditures for any other purpose whatsoever, but it would have to be on a per capita basis, and then only for the reasonable cost and care and maintenance of that individual.

Now, to indicate to you that the State considers that it may not presently do what I am suggesting, I have a letter from the Department of Economic Development, Division of Commerce and Municipal Aid, dated July 20, 1944, addressed to the Reverend Francis M. J. Thornton, Director of the Catholic Bureau of Institutions and Agencies in Trenton. It referred to an elderly lady who was then the recipient of public care. The communication acknowledges the letter of Father Thornton with reference to this lady, and it states that the Director of Welfare of one of our municipalities had applied to the Catholic Bureau of Institutions and Agencies for admission of this person to a diocesan institution for the aged. Father Thornton asked what arrangements, if any, could be made for the cost of the care and maintenance of that elderly person. Mr. Post, the Deputy Director, responded: "It is noted that (naming the subject) is not eligible for public assistance from a municipal department of welfare but is presumed to be eligible to receive old age assistance through the county welfare board, subject to State law and regulations. The old age assistance policy and regulations provide only for the payment of grants to persons who reside in their own homes, or when special arrangements are made for their care elsewhere. It is not the practice to make grants for so-called institutional cases."

That was a case where this elderly lady was not able and did not desire to go into some private home. Arrangements can be made for a recipient of old age assistance to go into a private residence and live there and receive the old age assistance monies which they are entitled to. But many people desire to enter into institutional care. They desire, for one reason or another, for instance, to enter a Catholic Home or a Methodist Home, or a Jewish Home, and they feel that it is better for them. It is more convenient for them, and it would seem logical that one who qualifies for old age assistance ought to have the right to select the home, assuming, of course, that it meets certain prescribed minimum standards and complies with the standards of the health laws, the fire laws, and all of the other protective laws. This person should be permitted to select the institution, if he desires an institution, where he would prefer to spend his time. But he may not, because under the interpretation of the constitutional provision and the administrative provisions involved, it has been determined, as I have just indicated to you, that this person may not make such selection except at the peril of losing the monies from the public funds to which this person otherwise would be entitled. The proposal which I make would permit the Legislature to enact general legislation to meet that situation. It would permit a statute to be passed that a person who is receiving old age assistance would have the right to select

the institution or the home to which that person desires to go. All this, of course, assuming minimum standards, etc.

Another example. In the County of Essex, for instance, a judge may have a girl before him who has violated some law, and she must be sent to a house of correction or a penal institution. Following out accepted social practice, the judge may determine—the girl we will say is a Catholic—in his view she would be better cared for in a Catholic institution rather than in one of the penal or correctional institutions of the State, and so he would send that girl to the House of Good Shepherd, a Catholic institution in Essex County, for a certain period. The officials of that house of detention are very anxious to receive this girl. It is within their charitable objective. They are not in any way suggesting that if they are not paid they won't take her. They will refuse to abdicate the opportunity which they have to receive this girl, and to give the girl all of the services and all of the aid that they can give her. But the County of Essex or the State at present pays nothing whatsoever for the maintenance and care of that girl while she is in the House of Good Shepherd. We respectfully submit that this is a proper procedure. We laud and support and give our every encouragement to the sentencing of unfortunate persons to this type of institution, but we say reasonably, the State should, if the Legislature deems it proper, pay for the reasonable cost of maintenance of that girl in that institution.

Again, a very important question develops in this field with respect to grants from the Federal Government. It is considered that under our constitutional prohibition the State may not receive federal grants for the purpose of administering these grants with respect to charitable institutions. They may only be administered where state funds are involved in public institutions only. This is a great handicap. There is a conflict of opinion as to whether or not the Federal Government wisely makes these provisions. There are those who feel that it is paternalism to an expensive degree in government. But accepting the law as we find it, the Federal Government does make available these monies, and we feel, therefore, that charitable institutions should not be prevented from participating directly, under the state agency and under state supervision, in these grants from the Federal Government. This proposal which I make, it is thought, will remedy that situation to a very large degree.

Again, these charitable institutions, as I intimated a few minutes ago, desire to cooperate with the State to the greatest possible extent, and they have cooperated with the State. They desire to have the *opportunity* to accept particularly people of their own faith within their own institutions. There was a bill in the Legislature last year

by a gentleman from Atlantic County, an Assemblyman, which has this very point of view in mind. However, it did not get out of the committee.

I am advised there are some Jewish institutions, as there are Catholic and Protestant institutions, which feel that this power, this right of selection, ought to be with the recipient of the fund. It would be a very great aid to the State if these charitable institutions are able to maintain their standards. They accept these people under any situation; they will not shirk their objective. The people come to them and they are accepted, supported as they are by charitable donations at the moment. But we believe sincerely that it will be a great aid to the State—in saving of state funds, in the erection of buildings, the providing of personnel, and all other things—if these charitable institutions are utilized in the measure and in the direction which I indicate. By the utilization of these charitable institutions on the per capita basis that I indicate, it would save the State untold thousands of dollars. On the other hand, if these charitable institutions are unable to continue, it will necessarily be reflected in a tremendous upsurge in the cost of the state administration of these social services.

That, generally, is what I had to say. I think, perhaps, I have stated my proposal, and I hope I have clarified what seems not to have been clear before. I will be very happy to submit to any questions that any committee member desires to present.

CHAIRMAN: Mr. Cavicchia?

MR. DOMINIC A. CAVICCHIA: Judge Rafferty, I have been reading this proposal of yours, and I am at a loss to understand where it would do anything that cannot now be done by the Legislature under general laws.

MR. RAFFERTY: Well, Mr. Cavicchia, there is a dispute there and that is the reason I made the proposal. There are those in the State Government who say the Legislature is not empowered to enact such a law. It is true that under the cases the State may contract for the services of a charitable institution, but that does not seem to be suitable. For example, it is generally used with respect to charitable hospitals. Assume I am a member of the board of directors of a large charitable hospital. The county makes contributions to that hospital, as it does to other charitable hospitals in this county, on a basis which is quite arbitrary. It depends upon the amount of funds which the board of freeholders contributes—depends on what they have available for the purpose. It is arbitrary and hence unsatisfactory. It is recognized that these contributions by the public body in no measure—perhaps that isn't quite true, but not in a total measure, that is true—meets the expense of the charitable hospital for services to indigent persons who are not able

to pay for those services. In that aspect this proposal would permit of the payment for those services on a per capita basis, and hence it would be merely a matter of the charitable hospital, having been approved by the state agency, having met the state standards prescribed by law—the statute having been enacted—it would be a mere matter of arithmetic to determine what the just compensation should be.

Therefore, in that aspect it is recognized, but it is felt that generally, in the larger number of cases, it is not recognized. I have indicated just one phase, the old age pension. There, specifically, it is held that the party may not be the recipient of an old age pension if he desires to enter and become a guest, or whatever other language you care to use, of a charitable institution. He loses his old age pension thereby.

MR. CAVICCHIA: Judge Rafferty, it seems to me that you are arguing now the point of policy, the legislative policy under the legislative police power that exists, more than you are arguing the power of the Legislature to do these very things which you seek to do by this amendment.

MR. RAFFERTY: No, I don't think so, Mr. Cavicchia. Rather, I am trying to create the opportunity for the Legislature to have a policy, because of the questionable right to use state funds for the purposes which I indicate.

CHAIRMAN: Are there any further questions? . . . Senator Lewis.

MR. LEWIS: Judge Rafferty, do you maintain now that the Legislature does not have the authority to provide by general law for the aid, care and support of the needy?

MR. RAFFERTY: No, it does have that power and it presently provides, but I have pointed out that in the administration of those public laws the State may not pay for the cost and maintenance of one of its citizens who is the recipient of aid in a private charitable institution.

MR. LEWIS: That is what you referred to in your last proposal, the first proposal for the aid, care and support of the needy. You admit the Legislature now has that power?

MR. RAFFERTY: Yes, Senator, if you will. Perhaps the way this is set up might have lead to the confusion. It classifies the type of persons who are under consideration and then, lastly—this is one paragraph—lastly it provides that all of those persons there listed may be provided for in an institution or an agency other than a public institution or agency, but authorized by the state agency, on a per capita basis. That's the gist of the whole thing.

MR. LANCE: Judge Rafferty, your proposal sets up five types of services?

MR. RAFFERTY: That's right.

MR. LANCE: Now, is it your desire that the last two and one-half lines modify and pertain to each of those five types of services, or merely the fifth?

MR. RAFFERTY: No, it was intended to cover each of the types. It was probably poor draftsmanship.

MR. LANCE: That is a matter going merely to the grammar and not to substance.

MR. RAFFERTY: That's right. It was intended to apply to the several types there set forth.

CHAIRMAN: Judge Rafferty, to get your position clearly: Would what you contend for be just as adequately met if the first, second, third, and fourth provisos in your article were stricken and the proviso would then read:

"Nothing in this Constitution shall prevent the Legislature from providing as it may deem proper, by general laws, *(and I skip down to the line)* for the aid, care and support of neglected children and of the needy, sick, or aged through agencies or institutions other than State or public agencies and institutions, but authorized by a state agency, by payments made therefor on a per capita basis."

MR. RAFFERTY: Cross that and leave out:

"the education and support of persons who are blind, deaf, dumb, physically handicapped or delinquent."

CHAIRMAN: I know, but is there any—I see what you mean. Go ahead.

MR. RAFFERTY: I say this too, Senator. The reason the language is as it is, is because I followed the New York Constitution and they deemed it necessary to put it in, and that's the only reason it is in. I think, as you suggest, Senator O'Mara, that last paragraph could be rephrased and the four preceding paragraphs could be omitted.

CHAIRMAN: Any further questions? . . . Thank you very much, Judge Rafferty.

MR. RAFFERTY: I want to thank the Committee for the opportunity.

CHAIRMAN: Is Mr. Evans present? He is registered here but I don't see him in the room. Mr. John Evans?

(Silence)

Mr. Caldwell? You may proceed.

MR. CURTIS C. CALDWELL: Chairman O'Mara, members of the Committee:

My name is Curtis C. Caldwell. I am the County Engineer and Supervisor of Roads in the County of Essex. I would like to comment on Section VI, paragraph 2 of the tentative draft of the Legislative Article *(reading)*:

"The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting

to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature."

I assume that the phrase, "other than counties," expresses some fear that some board of freeholders may arbitrarily enter some community and attempt to zone in conflict with local thought. I would like to point out, however, that there are many occasions when the local municipality may desire the county to step into the picture. At the present time those municipalities which have an accepted master plan may establish building setback lines as part of their master plan, and as part of the police powers. However, those municipalities which do not have a master plan cannot do that. That was attempted in the County of Essex on one of our county highways and the first time it was in application a property owner who wanted to build beyond that line was immediately attacked.

It seems to me that the protection of the municipality may be in the legislation itself. I can appreciate that in some municipalities there may be trouble brewing if the county went in and attempted to exercise its zoning authority and the local municipality objected. However, the local municipality may want it and cannot perform it. If the county with its master plan for a county highway system can establish its building setback lines and the legislation provides for concurring action by the municipality, it seems to me that ample protection is given.

We don't know what the future is going to hold in the designing of our highway system, or designing in any of our local communities, either at county level or municipal level. I am strictly interested, of course, in our highways, because from our studies we find that automobile traffic in the next ten years is going to expand about twice. Something must be done to protect the highways themselves from encroachment, in order to permit the proper widening to give the adequate capacity that is going to be needed for that.

I think it is a mistake to make that restriction "other than counties." I am hopeful that you will reconsider and that you will place the words "including counties" in there, because I really believe it is of benefit to the municipality and to the citizens themselves. I think it is a protection. I have been discussing it this morning with Mr. Robert Adams, freeholder from Somerset County. He is president of the Freeholders' Association of the State of New Jersey. He is going to canvass the members of that association and will have an article on that item for you. I hope that you will not push this thing through until you have heard from all sources on it. That is all I have to say, Mr. Chairman.

CHAIRMAN: Does any committee member have any questions to ask Mr. Caldwell?

MR. JORGENSEN: Isn't this adequately protected by paragraph 3 in the same section?

MR. CALDWELL: No, this is prior to acquisition. The point is, in paragraph 3 there is a phrase requiring or permitting excess condemnation for highway purposes.

MR. JORGENSEN: In the ultimate event, you have the protection, at least.

MR. CALDWELL: No, because as I see it, in the preparation of a master plan such as we have in Essex County, there are so many highways that are at present inadequate in width that it is practically impossible to do everything at once—and here we are, coming into a building expansion period. If we can protect the width of that highway and prevent encroachment on an established building line, it seems to me that you are saving the county and taxpayer ultimately, of course, hundreds of thousands of dollars in the cost of acquisition. In other words, we are purchasing property that has old buildings rather than new buildings.

MR. JORGENSEN: By the same token, Mr. Caldwell, is it not possible for the county to cooperate with the political subdivisions in coinciding their municipal plans with the county plans? If the county plans are as good as they should be, you should have no difficulty with the municipality.

MR. CALDWELL: We are doing that at the present time. I am meeting with every planning and governing board of every municipality in Essex County. The plan is established and is sufficiently elastic so that we can meet any conflict at the local level. However, as I pointed out before, some municipalities cannot go along with it. I say cannot, because they have not the authority to zone in the absence of a master plan. They are willing to cooperate, and one of our towns has attempted to cooperate, but it just didn't hold. Now, if the county with a master plan can go ahead and zone to protect any municipality, with the concurrence of the municipality itself, it seems to me protection is given through legislation, rather than through preventing any such action as that in the Constitution.

MR. JORGENSEN: Do I understand that the proposal you submit here is to require the county to have the right to plan, but its planning of zones would be ineffective unless it is consented to by the municipality?

MR. CALDWELL: The way it is working out now, yes.

MR. JORGENSEN: Aren't we back where we started?

MR. CALDWELL: No, because we can't take action on it.

MR. JORGENSEN: You can't take action under your plan anyway unless you have the consent of the municipality.

MR. CALDWELL: That's right. The municipality will give its consent, but the municipality has not the power to act in the absence of a master plan.

MR. JORGENSEN: Why not?

MR. CALDWELL: Because it is not in the law.

MR. JORGENSEN: What law?

MR. CALDWELL: The law that permits the—and I can't quote it, I'm sorry—but it is a law which permits municipalities to establish building setback lines if they have an accepted master plan.

CHAIRMAN: Any further questions?

MR. LANCE: Mr. Caldwell, doesn't your proposition boil down to this? It is your desire that counties in 1947 have the power to zone so that in 1967 those same counties may acquire additional land by cheap condemnation?

MR. CALDWELL: To some extent that is true. That is, any time between now and then. That is the practice now at the municipal level where they have a master plan. That is going on at the present time.

CHAIRMAN: Any further questions? . . . Thank you very much, Mr. Caldwell.

CHAIRMAN: Is Mrs. Merrill in the room? Is there anyone here representing the League of Women Voters who would like to speak?

(Silence)

CHAIRMAN: Mr. Charles Frye.

MR. CHARLES O. FRYE: Mr. Chairman. In Section V of the Legislative Article—

CHAIRMAN: Will you state for whom you appear?

MR. FRYE: It's for myself. I am an author, along with two other men, of a syllabus that is entitled "The Science of Citizenship." It's to be put before the universities and colleges as a course superior to political science. There is also a set-up in the syllabus for setting in operation in Essex County a model system of citizen participation in government, but I'm not here speaking for that project.

I have with me some bulletins which I could leave with you which describe some of the things that we consider very vital in enabling the citizen to perform his function of sovereignty. We are speaking a lot about what the citizens authorized you to do. Today the defective processes of citizenship are the worst disgrace we have in America because of the things that arise from the breakdown in the structure of the citizen's participation in government since the town meeting went out of existence. The citizen's ability to actually know what's going on in government and to affect that government in a sane, sound manner practically passed out, too, to a very large degree. Therefore, I see ways of improving this Section V.

I like much of Section V but would favor a little addition to it. There you say: "The Legislature may appoint, and members thereof may be appointed, and they may serve as, members of any commis-

sion, committee or body whose main purpose is to aid or assist the Legislature in performing its functions." I think that is an extremely important provision because I believe in giving the Governor the power which you have planned in the Constitution. But I also believe that unless the Legislature is able to perform its function as intelligently and as powerfully as the other, you are going to run into difficulty with the citizens. They will believe that you are giving too much power to your Executive Department. You see, we have almost forgotten that to a great many persons the term "sovereignty as a citizen" has no meaning. A lot of folks don't even know what you are talking about when you say that.

CHAIRMAN: Forgotten what, Mr. Frye?

MR. FRYE: What the term "sovereignty as a citizen" means.

What I read to you is all right. Then I would go on to say this:

"or whose similar purpose is to aid or assist the people of the State in the more perfect performance of the function of citizenship sovereignty."

In other words, the same aid that you are there giving the Legislature should be set up in a way that would enable the citizens to utilize that service, too, because the citizens must organize themselves in a way that they are going to be able to call upon our government—not only the State Government, but all levels of government—for information so that they know what they're doing.

I think that would be a help not only to the citizens, but a help to the Legislature when you are talking the proposition over with the public. We plan to set this thing up in a way so that the public will know what is going on in the administration of government as well as in the Legislature.

Now, there is another function. It deals with the Auditor, and also with the Librarian, but I come specifically to the Auditor. What is the main purpose of an Auditor, anyway? Auditing has two main purposes: to see that the government is administered honestly; and then to have the auditing so set up, covering all functions of government, all departments of government, so that you can actually judge the efficiency of government. I feel that that ought to be the Auditor's job. It ought to be made even clearer and stronger in the minds of the people, that it isn't just one of those little jobs where somebody is looking over the books and finds it is perfectly honest and square, and produces no understanding of what is going on. You may not put as much into that Article as I have here, but I want to read this to show you what I have in mind—the verbiage of it. In other words, I propose that you put in a new section there. This would be Section IV relating to the Auditor¹ (*reading*):

¹The reference appears to be to Section V, paragraph 5 of the Tentative Draft of the Legislative Article.

“To insure quick, adequate and properly departmentalized, easily understandable, financial information, monthly and periodically, in the form of public document reports, useful to the executive, to the Legislature, and to the public alike, the office of State Auditor shall be under the sole direction of the State Legislature to be appointed by both houses thereof, and to serve subject to a majority vote removal of either house.”

In other words, my thought is give him power and also provide for his removal unless he is a person in whom the public has confidence. It is highly important not only that the Auditor is doing a job, but that the public knows who he is and knows that his information is reliable. Then I go on and say this (*reading*):

“The office of Auditor, by joint resolution of three-fifths vote of the two houses of the State Legislature, may exercise reasonable review of pending expenditures not covered by annual budget approval.”

Now, that isn't absolutely essential possibly, but what I have in mind there is this: an Auditor should perform more or less the function of a Comptroller. In other words, the Auditor needs some power, so that if things aren't going right, the legislative body can be tipped off and actually be on its toes. Then what you have below, I have put in that same way: “Neither the Legislature nor either house thereof shall elect or appoint any other executive, administrative or judicial officer.” That is virtually what you have in the other, but it puts an emphasis on that job; the former doesn't convey that idea.

There is another one that I think is extremely important so far as the citizen goes. That is your State Librarian. You here in this State, or we here in this State, are extremely fortunate in having a man like Sidney Goldmann to head up the State Library. I happen to have known a man way back in 1914, who did a wonderful job in Wisconsin, named Charles McCarthy. There they provided a service to the Legislature. I think it was far beyond anything that has been done since that I know anything about. The librarian not only helped to prepare bills, he would run all over the country. He told me about going as far as Japan, Germany, England, and other different places to check how legislation in existence there was operating and what the results were.

That job of Librarian, or somebody in the outfit, ought to have larger powers than we have today, so that we are not going off and taking pot luck chances on all these things. I had in mind that if the Librarian were appointed by the Governor, as he naturally would be, but subject to dismissal by say a two-thirds, or a three-fifths, vote of the Legislature, if he were not doing the job properly, then the Legislature would be sure all the time that you have a first class library system, and I'd like to see that in there. I'd like to see great emphasis put on this job of Librarian, because he has a three-fold function, serving the administrative branch, the legislative branch, and the citizens.

I have with me here enough of these bulletins for every member of the Convention. I'd like to point out one little thing in it before I quit. I'm speaking about the citizens. It is this. I have four conditions here which must be met. Number three is this (*reading*):

"The specialization of the citizen's work must be the same as the specialization for the governmental activities at each level of the government—municipal, county, state, national, and international."

I want you to give real consideration to this function of the citizen, because we are absolutely falling down in democracy, all over America, because we have paid very little attention to the structure of the citizenship. And if we do this, then we make it possible to survey government. This shows you how that could be done. Therefore, I would say this,—that in setting up your administrative functions it ought to be provided by legislation, not necessarily in the Constitution, that the Legislature have similar committees. In other words, there ought to be a direct contact between the functions of the administrator, and the legislator, and the citizen. Unless that is done, unless that coordination is brought about, we are going to come down to Trenton here and wander around for days and get nowhere. Now, I'd like to leave these with you (*indicating pamphlets*) and I thank you very much.

CHAIRMAN: Does any member of the Committee desire to ask Mr. Frye any questions? . . . We would like very much to have the pamphlets, Mr. Frye. Thank you very much for coming.

Mrs. Merrill, please.

MRS. J. C. MERRILL: Senator O'Mara and members of the Committee:

In presenting comments on the tentative draft of a Legislative Article, the League of Women Voters wishes to congratulate the Committee for the excellent work it has done. We note with interest that the Committee concurred in approximately 75 per cent of the proposals advanced by the League, and two-thirds of those were used in substantially the same form.

You are particularly to be complimented on the restriction of the Legislature's appointive power. In removing this non-legislative function you have furthered the principle of the separation of powers and discouraged political practices detrimental not alone to legislatures but to the democratic form of government itself.

Your provisions for annual, unlimited sessions, for the calling of special sessions, for lengthened terms (with overlapping terms in the Senate), for the fixing of salaries by law, and for a recorded vote are, we think, excellent. In addition, you have included a number of other good features, such as a fairly easy method of calling a special session, authorization for such a body as a legislative council, and so forth.

On the other hand, you have omitted several items we think

should be included. Under *passage of bills*, the means you propose for declaring an emergency would no doubt slow up the tendency to pass large numbers of bills without careful consideration, and the three-fourths record vote is certainly a safeguard for the minority party, but we still feel that the average citizen will be best protected by inclusion of a provision for bills to lie on the desks of members in final form for at least three days before final passage. Would it not be wise to insert the words "at least by title" in the sentence regarding reading of bills if you intend to make the present practice permissible?

For *home rule*, although the League does not feel prepared to go into the details of a local government article, it does feel that one should be written into the new Constitution because of the importance of local-state relations and the need to make clear what powers are delegated to municipalities and what reserved to the State. It has seemed to us that a degree of self-government should be possible without reference to the Legislature; that there should be provision for the Legislature to enact general laws regarding the organization of counties and municipalities, also optional laws which would become operative upon referendum vote in the units concerned. The tentative draft, in its provision for passage of special laws for certain municipal corporations, confines petition and approval to acts of the governing body. We feel that the right of petition should be extended to the people and that approval should be by referendum only. Another provision which we feel should be included is one allowing local units of government to cooperate on matters of mutual concern.

As to *dual office-holding*, the League feels that Section V dealing with this subject should include reference to civil divisions. We believe that no member of the Legislature should hold a position of profit at any level of government. We would add "and for one year thereafter" to paragraph 1, Section V, thus further reducing the temptation for a legislator to create a position of profit to himself.

An enumeration of differences tends to overemphasize them. However, we understand the purpose of this hearing to be that of finding out what citizens think of the specific wording of items, so we will also call your attention to the following:

Regarding *salaries*, we had hoped provision for increases or decreases would be made in such manner that a legislator could not increase his own salary during the term for which he was elected. However, we realize the overlapping of Senate terms presents a problem here. The prohibition against additional allowances (except for presiding officers) would mean that members of a legislative council could not be paid for what might amount to considerable extra work.

Regarding *special provisions*, will paragraphs authorizing legislative action on public housing, health, public education, relief, and conservation be written into other Articles? The League list of constitutional changes suggested a separate Public Welfare Article which would include all of these, as in the Model State Constitution.

Other League proposals not included in this draft are the specific authorization of the Legislature to make investigations, and the establishment of committees with provision for relieving them of bills. While the right of the Legislature to investigate may be considered an inherent one, at least 13 states have explicitly granted such power in their constitutions, at least to the extent of granting power to "compel the attendance and testimony of witnesses and the production of books and papers." Since there is concern that an investigation might become an inquisition, it would seem wise to include a clause limiting the purpose of investigations to gathering information for legislation.

We regret that no mention of legislative committees is made in this tentative draft and hope that provision for them will be made in the final one. Only through careful committee consideration can a legislative body adequately prepare for action on a wide variety of matters, many of them technical. Since the meetings and records of committees are so important, both to the Legislature and to the people, due notice of hearings should be provided for and committee journals should be kept as a public record. The League endorses a proposal to allow one-third of either House to relieve a committee of consideration of a bill.

We are most appreciative of your courtesy in hearing our further statement of proposals and wish to emphasize that in general we consider this draft a great improvement over the present Legislative Article.

CHAIRMAN: Thank you very much, Mrs. Merrill. Does any member of the Committee desire to ask Mrs. Merrill any question?

MR. JOHN L. MORRISSEY: I'm not quite clear, Mrs. Merrill, on the reference to legislative committees. I wonder if you could go into that a little more.

MRS. MERRILL: Well, we think that more of the work of the Legislature should be done in committees.

MR. MORRISSEY: Do you think the committees should specifically be mentioned in the Constitution?

MRS. MERRILL: No, but we think a general provision saying that the Legislature shall appoint committees should be in the Constitution. We don't think they should be enumerated.

CHAIRMAN: Of course, the rules of both Houses of the Legislature provide for the appointment of committees, Mrs. Merrill.

It is doubtful to me how the mere inclusion in the Constitution that legislative committees shall be appointed would bring about any improvement.

MRS. MERRILL: Well, perhaps it's a moral persuasion—the idea that it is written into the Constitution giving weight to the appointment and work of the committees.

CHAIRMAN: Could I discuss with you for just a moment the suggestion that bills should be on the desks of the members in final form for at least three days before final passage? That is not the great difficulty that we in the Legislature have found, because in many instances bills are on the desks of the members of the Legislature for weeks, and even months, before they are moved for final passage. But what we have attempted to avoid is what has been called "legislative lightning," a practice whereby a bill would come out of the committee suddenly, and then be moved on third reading for final passage within a matter of hours, or perhaps even of minutes. Now, that bill might have been on the desk for two months, but the members of the Legislature generally have had no notice that it was intended to move it for final passage. I can tell you from experience that it is obviously impossible for members of the Legislature to be familiar with all of the bills which are introduced, because there are upward of a thousand introduced every session. So that doesn't strike at the real evil of the situation—the requirement that bills be on the desk in printed form for three days. It does in some instances, and the Committee gave very serious consideration to that proposition.

But we found ourselves up against this difficulty: Frequently when a bill is moved on third reading, it is found that it is necessary to make a minor amendment—the elimination of a comma, or the insertion of a comma, or some grammatical change—and if this provision were written into the Constitution, it would mean that the bill would be on the desks of the legislators for three days in the final form, that is the form in which it was to be passed, and it would be impossible for the Legislature to correct these minor errors when the matter comes on for third reading. Do you see the difficulty?

MRS. MERRILL: I do. I think I probably overemphasized this point.

CHAIRMAN: Are there any further questions? . . . Thank you very much, Mrs. Merrill. You have contributed a great deal to our discussion.

Mr. George Condit is the next speaker listed.

MR. GEORGE CONDIT: I am George Condit of Newton. I appear here officially as a representative of the Motor Vehicle Agents' Association of New Jersey. When I began to survey the

workings of this Convention, it was in a selfish light. As I discovered what had been done by the Convention, I found it was necessary for us to adopt a very broad attitude toward the problem. Our first concern was solely with the identity of the Motor Vehicle Department, and I'm not here for that purpose now.

During the last two weeks I have been going to the various points at which there are agencies in the State, and through the agents contacted bankers and lawyers and other people, and we have developed the fact that there is unmistakably opposition to too much centralization in the hands of the Executive. We feel that a better solution for the State's ills might be effective leadership, but if the Executive, instead of having patronage power, is compelled to develop that effective leadership, it will be a far more wholesome situation.

In order that we don't talk at random, we are addressing our exception to Section V, paragraph 5, of the Legislative Article, reading:

"Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer, except the state auditor."

Our objection to this is coupled with an objection to Section IV, paragraph 2, of the Executive Article, which constitutionally would give appointive power to the Executive of all department heads. These two paragraphs constitute a change from our present system, and we feel that a change of this nature should not be made unless it were clearly demonstrated that it was both necessary and wise, and the benefits to be derived therefrom were positive and not speculative.

At the moment the heads of the departments have been selected in at least three ways, and no charge is made that these department heads are not doing an honest and efficient job. We hold no brief (or grief) for any particular method of appointing or electing these heads, but we firmly believe that the power to determine how these department heads shall be chosen should be a function of the Legislature, which rightly determines the identities of the departments and their duties. The purpose of these changes is very plain, namely, to put into the hands of the Governor firmer control of the business of the State.

It has been said that the Constitutional Convention must indulge in no political thinking. But let us for a moment be realists. Do the members of this Committee for one moment believe that Doctor Clothier and Mr. Frank Hague use the same mental processes in placing a value on these two paragraphs which, together with the paragraph granting succession, would enable an unscrupulous political boss to build up a machine from which the people of this State would get but little benefit in the way of efficiency and

economy, and which might be very difficult to get out of power. The American system of checks and balances is not perfect, but for more than 150 years its average performance stacks up well with any other system on earth.

If ours is a system of popular government, and if the Legislature is honest and wise enough to make our laws, let us trust them to place those appointive powers in the hands of the Executive or in such other manner as they deem best, and then so long as it works well, leave it there. But if for reasons clear to them, some change or modification is needed, let them have the power to change it. If it is locked in the Constitution, it will be very difficult to effect such a change. Thank you.

CHAIRMAN: Any questions for Mr. Condit?

MR. JORGENSEN: I, for one, would like to know just exactly what would be gained by departing from the well-established principle that the administrative power belongs in the hands of the Executive, outside of self-serving, selfish interests, who want to be protected?

MR. CONDIT: Well, I can very easily answer that. Those powers have not always been there. They are distributed now in three different ways in this State.

MR. JORGENSEN: One of the reasons we are here today is because of the fact that the people have felt that the Constitution is old and archaic, and it needs reformation, and it needs a stronger hand in the Governor's chair. Certainly, anybody who is offering a suggestion here today for the purpose of rendering the people a service, and particularly your group, would feel, I believe, that the proper responsibility for the administration rests with the Executive, and he, and he alone, with the advice and consent of the Senate, should have the power of appointment so far as those administrative heads are concerned.

MR. CONDIT: Should that be a constitutional matter?

MR. JORGENSEN: It is not a constitutional matter except insofar as it prohibits a body, other than the Executive, from usurping the executive power.

MR. CONDIT: Is there anything, if effective leadership is used by the Governor, to prevent the powers being designated where they are desired? There might be some real reason for a deviation from this plan of having all of the heads of all of the departments appointed by the Executive, but if he is exerting the proper influence he certainly can persuade the Legislature. I would think it has been done. Most of the department heads are appointed by the Governor, are they not?

MR. JORGENSEN: Most of them are, but there are cardinal examples. You represent one of the branches.

MR. CONDIT: I do not. The Governor now appoints the head of the Motor Vehicle Department, and has for some years.

MR. JORGENSEN: Well, what is your objection to continuing that power without any—

MR. CONDIT: We don't object to it. We are after a principle. You are setting up constitutionally an inhibition for any other manner of appointment save that of the Executive appointing them, and we are contending that by doing so you are usurping what should be a privilege of the Legislature. They are elected by the people. They are qualified to decide whether the Executive shall have this appointive power or whether they should distribute it in another manner. I believe the Agriculture Department has a different way.

MR. JORGENSEN: Well, with that line of reasoning, aren't you defeating the fundamental theory of checks and balances?

MR. CONDIT: I don't think so at all. I'm preserving a proper balance between them, and giving to the Legislature some powers that should . . . what do you want, a puppet Legislature? Don't you want them to have any power at all?

MR. JORGENSEN: You're asking me a question. Now the question that I'm trying to get from you is what benefit is to be served? The function of the Legislature is to make the laws, the function of the Executive is to administer the laws. Now certainly the law-making body should not be in a position to appoint the administrative heads.

MR. CONDIT: They should be in a position to say how they should be appointed. That is equally a legal function with determining what the department shall be. Is it not?

CHAIRMAN: Any further questions? . . . Thank you very much, sir.

Mr. Fred W. Goodwin is the next speaker. Mr. Goodwin, will you state for whom you appear?

MR. FRED W. GOODWIN: My name is Fred W. Goodwin and I appear on behalf of the New Jersey Taxpayers' Association. I'd like to make a comment regarding Section VII, paragraph 11 of the proposed Article, which says,

"No law shall be passed which shall make mandatory the appropriation or expenditure of any money by any county or by any municipal corporation formed for local government, unless such law shall be applicable to all counties or to all such municipal corporations, or unless the money so to be appropriated or expended shall be provided by the State, or the county or municipal corporation shall be reimbursed by the State for the appropriation or expenditure thereof."

The New Jersey Taxpayers' Association has been vitally concerned with the subject of mandatory expending laws for a number of years. As a matter of fact, it took leadership in a movement way back in the early '30s which lead to suspension of the provisions of

mandatory expending laws during the years when local governments found it very difficult to make both ends meet. During that time the local governments, or many of them throughout the State, probably were able to survive through the difficult years primarily because they were enabled to circumvent many of the laws which stipulated salaries and many other things that would have boosted the expenditures of these local governments. Of course, the suspension was more or less an expedient, and after the worst of the depression years passed the suspension discontinued. However, since that time the New Jersey Taxpayers' Association has maintained a continuing long-range program designed to correct the situation whereby a large volume of the expenditures of the local governments are set by state-enacted laws.

It is felt that the local governments are in the best position to determine what their spending requirements can be; that the local governments, being subject to the wishes and ideas of the local people, know what resources they have to maintain their local government, and that home rule should be established. During our long-range campaign, we have, of course, been interested in the large volume of legislation that goes through the hoppers every year which would aggravate the present situation. It would set more mandatory requirements upon the local governments in the way of expenditures. Fortunately many of the hoards of measures that have been introduced have not been enacted because there has been much citizen protest against many of these measures. Also, the Governors, and I think that Governor Driscoll is a noteworthy example of that, have vetoed many of these bills which would have increased the expenditures of these local governments. However, this process of proposing year after year many bills that would affect the taxes in the local communities, is one which is pretty difficult to maintain. It has been felt—and the Association has been joined by many organizations, and many individuals—that there ought to be some permanent remedy for the situation.

Your Committee has taken recognition of this fact in proposing paragraph 11. However, the New Jersey Taxpayers' Association feels that the particular paragraph recommended is not one which would remedy the basic fault. As we look at this paragraph, it seems to us that it would be a continuing temptation to the Legislature to enact laws and then to provide state funds for the carrying out of purely local functions. We think that would be a very bad thing because we think there should be a separation between what the local government performs and what the State Government performs; that by having state monies appropriated for local functions, there is an increase in the control of the State Government over purely local functions. We think that this paragraph

as suggested could lead to conditions that may be even worse than the conditions which it is intended to correct.

Therefore, the New Jersey Taxpayers' Association would like to reiterate its proposal that there be a plank in the Constitution, or rather a provision, which would control or limit or restrict the power of the Legislature to pass mandatory expending laws. To that effect, we propose that the following paragraph be inserted (*reading*):

"The Legislature shall not enact mandatory laws affecting the employment, emoluments, term, tenure, or pension rights of officers and employees of any political subdivision of the State whose salaries, pensions and other expenses, arising from their employment, are paid from other than state funds. Said officers and employees shall be certified upon the payrolls of said political subdivisions, and officers and employees of the State shall be certified upon the state payroll."

In other words, the New Jersey Taxpayers' Association feels there should be a complete separation of the two; that the State Legislature should set the salaries of state employees; that the local governments should set the salaries and so forth of the local governments.

Thank you very much.

CHAIRMAN: May I have a copy of that?

MR. GOODWIN: Sure.

CHAIRMAN: Does anybody desire to ask Mr. Goodwin any questions?

MR. CAVICCHIA: I was much impressed by your observation that this paragraph may create more evil than now exists in mandatory legislation. As this is written, isn't it possible that if the Legislature were to say—as I think it does not say, generally speaking, in certain laws—that any municipality which has a bond issue outstanding must appropriate so much money each year for the payment of interest and toward the retirement of the bonds, that is a mandatory appropriation? Yet it is designed for good, is it not?

MR. GOODWIN: Yes, sir.

MR. CAVICCHIA: This provision would make necessary the expenditure of state monies if that law did not apply to all municipalities alike?

MR. GOODWIN: Yes, that's true, sir. For that reason our suggestion applies to the laws affecting the employment, emolument, term, tenure, or pension rights of officers and employees of any political subdivision. It would not affect the bond issues or things other than employment.

CHAIRMAN: On the question of bond issues, does the Legislature do any more than establish general policy as to how much money shall be set aside by counties and municipalities for the re-

tirement of their bonds, and that applies to all municipalities alike, doesn't it?

MR. GOODWIN: That is true. The New Jersey Taxpayers' Association is thoroughly in accord with any ideas to control the fiscal policy of the local government.

CHAIRMAN: By general laws?

MR. GOODWIN: That's right.

MR. CAVICCHIA: But you might have classifications under those laws that wouldn't apply to all municipalities. There might not be the same need for all municipalities as there might be a need for those within a particular classification. Isn't that so?

MR. GOODWIN: True.

MR. MORRISSEY: Mr. Goodwin, do you think a provision as suggested by the League of Municipalities cures the defect in mandatory laws at the present time, which allows the Legislature to take one group of cities, or one or two cities, and place a burden upon them without the consent of the governed? Now, isn't it true that the amendment you suggested does not correct that?

MR. GOODWIN: Are you referring to paragraph 10, the one that precedes?

MR. MORRISSEY: No, I'm talking about paragraph 11. Let's assume, for instance, that the Legislature says all cities of the first class must put a state highway through the center of the city and bear the expense. The city doesn't want it but still has to pay for it. Now, the amendment you suggest would not correct such an act by the Legislature.

MR. GOODWIN: That's true. Our suggestion is that the Legislature confine its acts to the state functions and to the functions on employment in the State Government, and let the local governments determine their own employment.

MR. MORRISSEY: Don't you think it's a necessary function of this Constitution to protect against the passage of such laws as we've had in the past?

MR. GOODWIN: I think that our proposal would, sir. I think it would prevent the Legislature from passing laws which would affect the salaries of the local people.

MR. MORRISSEY: Well, assume that to be true, and I suppose it does that—that isn't the only purpose of the present Article in the Constitution. I think you have missed the point a little bit on what this one paragraph drives at. This, for instance, would stop the Legislature from taking one specific group of counties, say second class counties, and passing an act that all second class counties must have voting machines and pay for the purchase of the voting machines. In the county where I come from we had such an act passed that cost the county several hundreds of thou-

sands of dollars, when nobody there apparently wanted it very much. This Article is aimed directly at such mandatory laws.

MR. GOODWIN: Well, we feel, sir, that the big evil is the fact that so much of the cost of local government is composed of salaries and that so much of it is determined by the State Legislature that there is the greatest opportunity for helping the local governments by removing from them a large number of restrictions that they already have. They are constantly aggravated each year by the passage of new laws.

MR. MORRISSEY: Well, assuming that to be so, don't you think the other feature creates a problem that should also be dealt with in a Constitution?

MR. GOODWIN: Well, that's quite true. I don't think that we would say that the Constitution should not provide that. However, we think that the provisions should not be a continuing temptation for State Government funds to be used in the local government. There you have a condition where the domination of the State becomes greater and greater as the years go on because the State might provide more and more of the funds. You see, this provision would not say that the Legislature should not pass such and such laws, but should do so only if it provides the funds. That is what we are afraid of.

MR. MORRISSEY: Are you suggesting a substitute amendment or are you suggesting an additional amendment?

MR. GOODWIN: We are suggesting that it apply to the employment, tenure—

MR. MORRISSEY: In other words it would be additional. You are not suggesting that this be taken out, but suggesting an additional amendment, is that right?

MR. GOODWIN: We are suggesting that the provisions that have to do with the state funds being provided for local purposes be taken out, and that the employment—that is, the right of the local governments to employ and pay salaries and so on—be restricted to the local government.

CHAIRMAN: Any further questions? . . . All right, Mr. Goodwin. Thank you very much.

MR. GOODWIN: Thank you very much.

CHAIRMAN: Mr. Jamouneau.

MR. LESLIE H. JAMOUNEAU: I would like to propose changes in three provisions.

CHAIRMAN: Will you advise for whom you are appearing Mr. Jamouneau, please?

MR. JAMOUNEAU: In my own behalf. I don't represent any organization.

I'll dispose of the shortest one first, with relation to paragraph 7 of Section IV.

CHAIRMAN: Section IV? That's at the bottom of page 7.

MR. JAMOUNEAU: That's the one that provides for the fixing of legislative salaries by the Legislature.

CHAIRMAN: Yes.

MR. JAMOUNEAU: I think that the fixing of legislative salaries is the plain duty of the makers of a Constitution, and should not be shirked. It may be that the consensus of opinion would favor a higher salary than the present \$500, in which case I am ready to agree with those who would increase it to a moderate extent.

But the idea of placing this duty on the Legislature seems to me to be altogether wrong. A legislative salary ought not to be looked upon as are ordinary wages, which must be adjusted from time to time to meet the changes in living costs and standards, but rather as an honorarium which may properly be decided upon at a permanent amount now just as well as later. I cannot see how any future Legislature will be any better qualified or more fully authorized by the people to decide this question than is the Convention itself which is making this Constitution.

In the event that you agree in part with this proposal, I urge that the salary be fixed at not over \$1,500, and not at the larger amount which your Committee has been reported to be considering. Also, that there be no difference as between the salaries of the two. I am strongly convinced that raising the salary, even from the present \$500, will not conduce in the slightest towards interesting a higher quality of candidates. No financial sacrifice is involved, for no legislator is expected to give up his business or employment. My own observation is that many highly qualified persons who have been unsuccessful in realizing their ambition to serve in the Legislature failed because of considerations quite apart from the question of salary.

CHAIRMAN: May I ask you a question?

MR. JAMOUNEAU: Yes, sir.

CHAIRMAN: Did I understand you to say that no financial sacrifice was involved in serving in the Legislature?

MR. JAMOUNEAU: No, I'll take that back. There is a financial sacrifice but—

CHAIRMAN: But, we should do it.

MR. JAMOUNEAU: What I mean is, there is no financial sacrifice that a citizen ought not to be willing to make.

CHAIRMAN: Now, let me cite for you the experience of one prominent member of the lower House of the Legislature last year, who told me—and I have every reason to believe that he is both accurate and truthful—he said for the first time since he has been in the Legislature, he kept an account of his out-of-pocket expenses. No entry relating to his loss of profit from his profession or any-

thing of that kind, but just his out-of-pocket expenses in attending the sessions of the Legislature. Those out-of-pocket expenses amounted to \$1,800 for a session. Now, do you think that that man was making a financial sacrifice?

MR. JAMOUNEAU: Yes, but let me make this remark. It is not only legislators who make financial sacrifices to perform their civic duty. Plain ordinary citizens take money out of their pockets, too.

CHAIRMAN: That's right.

MR. JAMOUNEAU: Perhaps more than legislators as a class. I stand by my recommendation and I would like to have you give it consideration.

CHAIRMAN: We will be very glad to. What is your next proposition, Mr. Jamouneau?

MR. JAMOUNEAU: Now, my next—

CHAIRMAN: Just a minute. Judge Lance wants to ask a question.

MR. LANCE: Would you care to state to us what you believe a freeholder in a large county, such as Essex or Hudson, should receive?

MR. JAMOUNEAU: I never thought about that. I am not prepared to discuss that. I don't really know what salaries—I don't know whether they devote their entire time to their position. I do know what the legislators are required to do and I am simply confining myself to that point. I would rather not discuss the other.

MR. LANCE: All right.

CHAIRMAN: Any other questions? . . . You will proceed then, Mr. Jamouneau.

MR. JAMOUNEAU: Well, the next question relates to paragraph 6 of Section IV. That's the provision that requires the reading of a bill on two separate days. The effect of this provision would be to lend constitutional sanction to the most extravagant legislative abuses that can be imagined.

This provision authorizes, as if it were an ordinary, acceptable procedure, the introduction of a bill of which the public has never been informed, its passage in both Houses on the same day, with a nonsensical second reading in each House, and a final enactment on the next day, without the bill ever having been public. Even in these modern days of rapid communication no substantial number of the people could learn of the pendency of this legislation before it was enacted, and the whole democratic processes of legislation would be encouraged by this provision to degenerate into an empty farce.

Rather than adopt such a harmful provision as this, it would be far better for the Constitution to say nothing at all about legislative

procedure, and leave it to the Legislature to make its rules without constitutional restriction or guidance. The traditions of democratic parliamentary procedure which have been built up over hundreds of years are a sufficient guarantee that no Legislature would dare to adopt as its rules any provision so unacceptable to the people as you would suggest by this constitutional precept.

The motive of this change is commendable, and I fully realize the legislative abuse of the suspension of its rules which it is intended to cure. But this change would not afford any remedy, and is therefore mistaken. When a Legislature is so dead to its sense of duty and trust to the people that it is willing to jam through legislation in a single day, before the public may learn of it, there is no sense in legalizing that action by merely requiring two days, even if they are "calendar" days, whatever that may mean.

I urge, therefore, that you either leave the Constitution as it is in this respect, and continue to leave it to the Legislature and the people who elect them to see that a decent conduct of the Legislature is observed, or else adopt a complete system of regulation of the Legislature which will effectively curb the abuses which you are seeking to prevent.

I am opposed to such legislative provisions in a Constitution, but the abuses of past Legislatures have been so serious and numerous that you may well consider the latter alternative, in which case I recommend the copying of the provisions in the New York State Constitution. Briefly, these regulations require the houses to keep a journal and publish it; open hearings; prohibition against enacting laws until they shall have been printed and on the members' desks for at least three days, unless in emergencies certified under the hand and seal of governor; and a prohibition against amendment after the printing of the bills in their final form, thus insuring accessibility of the public and the press to the impending law in its final form at least three days before it can be enacted.

I consider the above to be a minimum requirement for any constitutional regulation of legislative procedure. It is not important whether emergency legislation is authorized by executive action, as in New York, or by a three-fourths vote of the Legislature, a generally followed alternative.

CHAIRMAN: Do any members of the Committee desire to ask Mr. Jamouneau any questions in relation to this proposal?

(Silence)

MR. JAMOUNEAU: Did I make myself clear on that one?

CHAIRMAN: Yes, sir.

MR. JAMOUNEAU: Now, this is a little bit longer—it relates to Section V, paragraph 1. I propose to alter it to read as follows *(reading)*:

"1. No member of the Senate or General Assembly shall, during the term for which he was or shall be elected, or for one year thereafter, be nominated, confirmed, appointed or elected to any state civil office or position of profit by any official or body of the State Government."

In that form it is unnecessary to include the remainder of the section which permits legislators to run for office, because I have included that. I am only barring them from election by the Legislature.

The necessity for such a provision arises from certain other peculiar provisions of our Constitution, some of which are entirely unique, and the others of which are found in an insignificant few, if any other comparable states, and is further dictated by the lessons of past experience. The principal of the peculiar factors to which I refer are:

1. The almost unique extent of the executive appointive power, which includes the entire judiciary, and even local officers such as county prosecutors, tax boards, election boards and others.

2. The power of the Legislature to interfere, obstruct and even dominate the Executive in the exercise of purely administrative functions which should be the sole prerogative of the Executive. The present weakness of our Constitution in this respect is, according to the tentative draft of the Executive Committee (see Section IV) not only continued, but even aggravated. This has just been pointed out to you by Mr. Arthur T. Vanderbilt very clearly and completely, and I will not repeat his statements on the subject, with which, as far as I know them from the press reports, I fully agree.

3. The non-popular representative nature of the Senate, whose majority of membership is elected by constituencies totalling only fifteen per cent of the State's population, and whose financial contribution to the State's support is still a smaller percentage. The result is that legislation harmful to the majority of the citizens of the State is frequently enacted, while legislation needed for the welfare and prosperity of the majority is as frequently denied by a wilful minority whose motives are frequently connected with the appointment of themselves to state office.

4. The smallness of the total membership of our Legislature, which was established when the population of the State was only one-tenth of the present, and is now inadequate in size for the needs of a State of over 4,000,000 people. While I have not checked the point statistically, on the basis of such information as I have I feel quite confident that there is no other important state which has so small a legislature with relation to the extent of patronage in the hands of the Executive.

5. The bad effects of the two foregoing points are intensified by the fact that in recent years the Senate has come to dominate

the Legislature, so that in addition to the absolute veto which it holds over the lower House, it exercises a greater initiative and aggressiveness. A former Governor has described the General Assembly as a mere echo of the Senate.

As a result, the government of this State for the past generation has been on an average of very poor quality, and at frequent intervals has fallen to the most sordid level that can be imagined.

Instead of a government of separated powers, with an independent and orderly exercise of the separate prerogatives of the Executive and Legislature, we have too frequently had government by a coalition between the Executive and two or three legislative leaders, wherein the executive and legislative powers are merged and exercised jointly, in defiance of all the fundamental principles of American democracy.

Good Governors and bad Governors alike have resorted to deals to accomplish the objectives of their administrations. Legislators have sought and attained membership in the Legislature less from a desire to serve the public at a nominal pay than from a desire to gain permanent and lucrative employment in the State Government.

The justice of my point has already been conceded by your honorable Committee in your proposal to bar legislators from state office or employment when the office was created, or the salary thereof increased, during the legislator's term. I can see no ethical or logical reason for thus limiting the disqualification. The creation of the office, or increase of emolument, must be assumed to be proper exercise of the legislative power, and no one should be punished because of it. The real evil is that the legislator might prostitute his office, but this danger is just as present in the case of existing offices as with newly created ones. Logic therefore requires that you either adopt my proposal or else strike out the limited qualification which you propose.

As further proof of the necessity to provide this constitutional check against executive usurpation, legislative prostitution, and collusion of the branches of government, I briefly review the circumstances of the sales tax of 1935:

Have you ladies and gentlemen the patience to hear the details of this or would you rather have it put on the record without reading it?

CHAIRMAN: I think it might be put in the record. It will save time. You don't have to read it now. You can give it to our Secretary.

MR. JAMOUNEAU: It will save my voice and perhaps give you just as clear a picture.

CHAIRMAN: Yes, I think it would.

MR. JAMOUNEAU: It's not very pleasant reading.

CHAIRMAN: Whether it's pleasant or unpleasant doesn't make any difference. We are here to—

MR. JAMOUNEAU: I know, but I want it to get on the record so that every member of the Committee will read it. Then my purpose will be served.

CHAIRMAN: Well, it will be put on the record.

(*Mr. Jamouneau's statement is reprinted here for convenience*):

"In the gubernatorial campaign of 1934 both parties pledged no additional taxes. As soon as Governor Hoffman took office he proposed a general sales tax, alleging that the depression created an emergency requiring new state revenue. But the bill which he drafted and presented to the Legislature was in no sense an emergency measure, but a radical and permanent revolution of the State's established tax system. The tax was especially obnoxious because it placed more than half the burden on food, including even milk.

It became immediately evident that the proposal was indignantly not desired by a vast majority of the people, and that it was equally strongly desired by a very small minority, such as real estate interests, which had been agitating for the sales tax for many years.

The opposition, both in the Legislature and elsewhere, was so vociferous and universal as to cause Hoffman to withdraw his bill and to promise to defer action for further study, during which the Legislature was forced to sit far beyond its usual time. During this time the leaders of the Democratic Party were conspicuously silent, despite the unusually strong sentiment against the bill in such Democratic strongholds as Hudson and Middlesex.

After four months of mounting opposition, in May 1935 Hoffman made a tripartite deal with Hague and Rafferty, minority leader of the Assembly, as a result of which the bill passed the House June 3, 1935, substantially unchanged from the original draft, including even the obnoxious taxing of milk. The vote was 31 to 27, the Republicans splitting 27 to 11, and the entire Democratic membership of 20 voting solidly for the Hoffman bill, in gross disregard of the expressed protests of their constituents.

The bill carried by a margin of a single vote, and would have failed if any one of those voting for it had failed to vote.

On the following day, June 4, the Senate passed the bill under suspension of the rules by a vote of 13 to 6, the helpless minority bitterly denouncing the action as a 'raw political deal.' The passage of the bill aroused a storm of indignation over the entire State. Typical of the editorial comment was one in the *Newark News* entitled 'Hoffman's Stigma.'

Although the bill had been jammed through the Legislature exactly in the form desired by the administration, Hoffman deferred signing it in order to give the Republican-Democratic coalition led by Rafferty, who openly appeared as Hoffman's spokesman and representative, time to force an adjournment of the Legislature by the same steamroller tactics. The purpose of Hoffman's action was to prevent amendments of the law which the people were loudly demanding. Of course, such amendments could not be made until the bill had been signed, so there was a second and even more outrageous frustration of the people's will.

During the hectic hours between the signing of the bill and the forced adjournment of the Legislature, opponents of the tax succeeded in passing a single amendment exempting milk. If the adjournment had not been forced, the rising tide of popular resentment would have forced the Legislature to repeal the bill in its entirety within a matter of days.

On June 8, 1935, three days after Rafferty had supplied his necessary vote to the enactment of the sales tax, Hoffman announced his appointment to the Court of Errors and Appeals to fill a vacancy which Hoffman had providently kept open for five months, during which a full term of the court had elapsed.

There was no perceptible applause for this appointment. Rafferty was a typical lawyer-politician and Democratic leader of Middlesex County. He had been a lawyer for only five years, and was not admitted to the bar as a counsellor until 1945. In 1935 he had neither the legal experience nor the outstanding qualifications of a layman which would fit him to serve on the State's highest court.

For four months Hoffman stubbornly used his executive prerogative under the Constitution to resist the demands of the people for a special session to repeal the sales tax, during which time the new tax realized a total of \$6,272,492, of which 51 per cent, as expected, came from the sale of food. This at the depths of our greatest depression!

The stage to which the people's temper had mounted under the exactions of this law, which went to the extreme of such Nazi-like provisions as required the licensing of all retail merchants, is reflected by the vote by which the law was repealed on October 24, 1935: 50 to 3 in the House, and 11 to 0 in the Senate. Not a single one of the 13 Senators who had voted for the tax in June dared to vote against its repeal in October. Yet there has been no change in the sentiment of the people during these four months; all that the Senators had misjudged was their determination.

It is hardly necessary for me to suggest that the Rafferty appointment was not the only appointment of a legislator which may be logically linked with the enactment of the sales tax, and it is not necessary for me to particularize further, in view of the fact that every single vote was necessary, and I have therefore proved my point.

I believe it is manifest that if the provision which I now propose had been in our Constitution in 1935, New Jersey would have been spared this blot on her record.

The sales tax episode is but one of many similar which have occurred in the sorry record of the last 25 years. Many were as serious in their effects, but because the people were not aroused, the bad laws which were perpetrated by these deals were not repealed, and some which have not been nullified by the courts still plague the people.

Respectfully submitted,

Leslie H. Jamouneau"

MR. JAMOUNEAU: I am presenting the facts of that principally to point to several things. There was a complete prostitution of the executive office. There was a sale of the Legislature to the Governor, a collusion, and the absolutely unprecedented surrender of all democratic government in the State of New Jersey, which lasted for four years. The details are worthwhile, especially in respect to the people who are concerned with it. I would like you to consider my recommendations principally in the light of this fact. I think the principal idea of the Constitution is to correct the evils—that is, correct the faults which the past has indicated. We can't do better than to look at the record when we are considering this question. I think if you will read these facts you may see my point more clearly, this radical suggestion I am making, that legislators be disbarred from public office during their term and for one year thereafter.

Are there any questions?

CHAIRMAN: Do any members of the Committee desire to ask any questions?

(Silence)

CHAIRMAN: No questions. Thank you, Mr. Jamouneau.

MR. JAMOUNEAU: Thank you.

CHAIRMAN: Mr. John Evans.

MR. JOHN F. EVANS: I appear here this morning representing the City of Paterson. We were disappointed with the slight provisions for home rule that the Committee has recommended. We expected something more substantial. I want to comment on some thoughts I put down on paper.

Home rule for the cities and towns of New Jersey has been for the most part rejected by the Legislative Committee of the Constitutional Convention now in session. Thus New Jersey fails to keep pace with New York, California, Ohio, Pennsylvania, Maryland, Missouri, Michigan, Minnesota, and a host of other states. The inherent right of the people of each community to administer their own affairs has again been flaunted in New Jersey, this time by a Convention suffering from a State Government complex.

The League presented to the Convention some very modest requests to stop the increasing interference of State Government into local affairs to the demoralization of local government, but these suggestions have been mostly tossed out of the window. This is a grave wrong to the people of every city and town of this State, but before it is finally accomplished, there is still time for reconsideration.

The people of every community have an inherent right to their own management without improper interference into their local affairs by the remote and irresponsible agencies of State Government. The Governor, while a colorful figure, and the State Legislature are remote from the relatively unimportant in the daily lives of the people. On the contrary, local government is close and directly responsible to the people of the community and of vital importance to them constantly. The children on their way to school, the fire engine racing to the burning house, the garbage truck making its collections, the police car pursuing the speedster, the student reading in the library, the health inspector tacking up his blue-colored diphtheria notice, the white wing cleaning the streets, the youngsters romping in the playground, are all continuous reminders of the indispensable nature of local governmental services.

The city or town hall, the streets and sidewalks, the great sewer systems, the school buildings, the public housing, the great public reservoirs and water systems are mute evidence of the facilities and investments for the common good made by and for the benefit of the people of the local community at their own expense.

What actually does State Government provide for the people as compared to the facilities furnished by local government? It does very little in a tangible way, except to build state roads. Why, then, all this ado about the Governor, a gentleman most people will never even see or hear, or about the state courts in which the lawyers

are mainly interested but which everyone else tries to avoid, and about the sensation, the game called "bingo"? Surely, we need a different approach to government now, with the development of our State into over 500 municipalities containing over four million people, than in 1700 when the State consisted of a few villages and hamlets having an aggregate population of twenty thousand or less. The finest job this Convention could do would be to get the cities and towns out of their swaddling clothes. The officers of the now grown-up municipalities of New Jersey are greatly superior in knowledge and experience in local affairs to the members of the State Legislature who seem to fancy themselves as a sort of glorified board of state aldermen.

New Jersey is the most backward State in the Union in its treatment of its cities and towns. Owing to the constant short-changing by the State, the cities and towns lack the funds to continue rendering their essential services to the public, except by "fining" the owner larger and larger amounts each year for his offense in having a home. The Federal Constitution prohibits cruel and unusual punishments for crimes, but this State holds the world's record for the heavy penalty (in polite language called a tax) it levies upon the luckless individual who happens to own his own little home. What kind of a social policy is it that penalizes one for owning his own home? Five dollars tax per year for every \$100 of value, six dollars, seven dollars, eight dollars, and still going up. Must it go on until something snaps?

State legislators may look the other way. Convention delegates may find it more pleasant to play around with less disagreeable, if also less important, aspects of government, but the problem cannot be buried by those gentlemen who stand foursquare for the *status quo*. They are so accustomed to receiving all the benefits of local government, like the sunshine and rain, that as with the crack in the foundation wall, they never notice it until the building falls down.

The measures the delegates are now approving will have slight effect upon government, and will bring about no correction whatever of its fundamental defects. The people have been worked up to expect something real, but where they want bread, the delegates are preparing to give them a stone.

The underlying problem is the all-pervading ignorance of government and what it is supposed to do in this State. No books have ever been written about it and the colleges and schools, unlike those of Massachusetts, Connecticut, and North Carolina, give us little light or leadership. No leaflets or regular courses are available to public officials and employees about their duties, although they struggle to learn as best they can. With all our progress in the technical subjects, government, and particularly local government,

is the forgotten science. There is no real progress in the field. In fact, we are worse off now in local government than we were two hundred years ago. The editors, college professors, legislators and others have little idea as to how the "danged machine" works. The members of the Convention, whether they know it or not, share that ignorance. The result is that the treatment of popular government in the cities and towns by the State Legislature and by this very Convention is on a hit-or-miss basis. The root deficiencies are not studied or known and the pretended solutions are superficial and smart-alecky.

The public, which is kept uninformed, vaguely realizes that something is wrong, but does not know upon what to put its finger. Public opinion is a controlling force in our form of government, but when that government is kept enshrouded in mystery and complexity by those who do not wish the public to know, no intelligent public opinion is possible. This is all to the good for some people, but it is an insurmountable obstacle to better government. Perhaps we can in a few words help to clear up the mystery.

The No. 1 mistake was made 125 years ago, when the courts pronounced the imperialistic dogma that the cities and towns were the "creatures of the sovereign" and were subject to his every whim and order, whether for good or bad. Since the king had been ousted in 1776, the courts said the State Legislature was the new sovereign. This grant of unrestricted control over the local community to the State Government debased the city and town to the rank of a satrapy of the State. It is still the law.

The courts took a second step. They said that even if the "sovereign" in his grace and benevolence wished to endow the people of the community and their local government with authority over their affairs, the grant must be limited to the express and specific language, thereby making local government extraordinarily weak, rigid, and inflexible. That sounds technical, but it had serious degrading and demoralizing effects. Cities and towns were thereby placed in a vise which could be tightened at will by a remote body to the point of strangulation. That is now occurring.

The old dogma was a betrayal of the freedom and democracy which the people in the Revolution had fought for and won. The people of the community had merely changed masters, who merely proved to be even worse than the old. Actually, the city or town belonged to its inhabitants and it was not the creature of the sovereign, of the State, or of any other remote body. The reverse was more nearly the truth. In any event, the dogma lowered the dignity of the city or town in popular esteem and severely handicapped its government in rendering the services expected of it. It was a case of giving the dog a bad name.

The Legislature was too unfamiliar with local problems, too intent on purchasing political advantage for its members at the expense of the local community, too hasty in its efforts to get through with its sessions, too unresponsive to local requirements, too irresponsible for the consequences of its actions, to use its unbridled powers wisely. Consequently, it proceeded to abuse its powers and to interfere in local affairs, not for the good of the cities and towns, but oftentimes for every conceivable ulterior purpose except that. The people of the various communities had no chance of passing on these laws at a local, public referendum, although they were required to pay the freight. This crippling law-making still goes on, and in fact the draft of the new Constitution is not entirely free of the same influence.

The dogma brought another mischief. Law-making on municipal affairs became so profuse, that any logical and orderly development of municipal law on sound, general principles became quite impossible. That is why no one is able to write about it. No one knows what it is.

Because of these factors, the Legislature is constantly imposing new facts, burdens and incumbrances upon local government which have no relation to good government. In addition, it has steadily whittled down the sources of municipal revenue for its own selfish purposes. Is it not sheer imbecility to expect more and more from less and less? The Legislature has taken good care to provide plenty of money for its departments of State which render scant service to the public, but in contrast it has starved the local community to almost the point of death. Is it not time that a system which has worked so badly and threatens still worse consequences should be changed?

This Convention was hastily convened amid a deluge of talk about state institutions, the Governor, and the courts especially. It must be annoying to some persons to be told that the problems of those departments are not the vital ones facing the people of this State.

The Convention has a deadline, and no doubt like the legislators, the delegates are hot and tired and anxious to return to their occupations. If they yield to that temptation, they will have flinched from the making of a great reform that would bring tremendous benefits to the people of this State. The mountain has labored; will it bring forth a mouse? Each delegate has an important, personal responsibility to perform. The people hope his verdict will be the right one.

CHAIRMAN: Outside of that, we've done a good job, don't you think?

MR. LANCE: Mr. Evans, what additional sources of revenue do

you believe the municipalities should have that they don't now have?

MR. EVANS: Well, I'll discuss several sources that have been taken away from municipalities. Some years ago motor cars were responsible, or were liable, for local taxation. Those cars were removed from the local tax list to the detriment of ratables which we would estimate in Paterson today at about 15 million dollars, when the State imposed a gasoline tax. At the time the gasoline tax was imposed, it was stated that the municipalities would not lose any of their revenues but that a certain percentage of the gasoline taxes would be turned over to the municipalities to make up for their loss by exempting motor cars from municipal taxation. That promise was never kept. The municipalities do not get back the return or the equivalent of what they lost when motor cars were stricken off the list. A year or two ago all intangible property was made tax exempt by the Legislature.

MR. LANCE: We found that out at home.

MR. EVANS: Now then, what does that mean? It means this. That a person can avoid completely his responsibility for maintaining local government, though everybody ought to be responsible for it. There is no reason why the richest people should be exempt. There is no reason why the people who own the stocks and bonds and the bank accounts and all forms of intangible wealth—they are much greater than real estate, for example—should be totally exempt. I don't say they should bear a four, five, or six or seven percent rate, in excess of the interest they get, but they should pay something, and it is very unfair and very prejudicial to the homeowner and to the poor man to have to bear almost completely the load of local government support and have men having millions of dollars in intangible worth practically, to all intents and purposes, tax exempt. It isn't fair.

CHAIRMAN: Any further questions? Mr. Cavicchia.

MR. CAVICCHIA: Where did the municipalities get the right to levy that tax in the first place?

MR. EVANS: I can't hear you, Mr. Cavicchia.

MR. CAVICCHIA: Where did the municipalities get the right to levy that tax in the first place?

MR. EVANS: Where did they get it? They levied the tax in the Town of Newark from 1665, on, before the Town of Newark ever had any kind of a charter from the State. For 50 years they did that, from 1665 to 1715. There was always the inherent right of the municipality and its people to have their own government. Subject to regulations, yes; subject to general principles laid down by the Legislature, and it was so exercised in England, too.

MR. CAVICCHIA: The United States Supreme Court doesn't

agree with you that there is right of self-government in the municipalities.

MR. EVANS: I am no respecter of court decisions when they are wrong. I don't believe in clothing them with any sanctity when the principles they have laid down have not worked out well. That is one thing that lawyers have to find out.

MR. LANCE: Just one word. Do you believe that the State should control the local expenditures and borrowing of municipalities through some department, such as the Department of Local Government?

MR. EVANS: I believe in the Appropriations Act and in the Bond Act and in the Budget Act. I think that those acts, incidentally, were drawn by experts in municipal government and passed by the Legislature. Those are fine acts because they laid down sound principles of management. That's why they are good acts and we should keep them. I wouldn't suggest any interference or any crippling of the Legislature when they are really adopting laws for the good of the people and for the good of the local government.

CHAIRMAN: Any further questions? Will you leave a copy of your statement with the Secretary, Mr. Evans?

I want to announce before the Committee recesses for luncheon that luncheon may be obtained by any of the spectators at the Commons directly across the street. The Committee will recess until 2:00 o'clock.

(The session recessed for luncheon at 1 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Monday, July 28, 1947

(Afternoon session)

(The session began at 2:10 P. M.)

PRESENT: Camp, Cavicchia, Hacker, Jorgensen, Lance, Lewis Morrissey, O'Mara, Proctor and Sanford.

Chairman Edward J. O'Mara presided.

MR. EDWARD J. O'MARA, CHAIRMAN: The meeting will come to order.

I recognize Commissioner Miller for the purpose of introducing Dr. Reed.

MR. SPENCER MILLER, JR.: Mr. Chairman and members of the Legislative Committee:

The New Jersey Committee for Constitutional Revision which, I am sure you are all aware, consists of 11 different constituent organizations, has from the beginning sought to aid the Constitutional Convention, not only in understanding the position of the respective members of this organization, but through the submission of appropriate briefs to guide the various members of the Committee in their deliberations. This afternoon the New Jersey Committee has brought to this public hearing one of the outstanding experts in government in this country.

I am here today at the request of the president of our New Jersey Committee, Mr. James Kerney, Jr., who, I am sorry to say, was unable to be here, but who, I am also to say to you, sir, will be here at a later hour this afternoon. He has asked me if I would present to the members of the Committee, Dr. Thomas Reed, who happens to be an old friend of mine.

Dr. Reed brings to the post of a government consultant a wide and varied experience not only in the theory of political science but as a practitioner of the art. Dr. Reed was secretary to the Governor of the State of California. He served for nearly 20 years as a member of the faculty of the University of California. He gave courses on the subject of legislation as part of his work in political science at that institution. He came from the University of California and went to the University of Michigan where for another period of nearly a decade he served with distinction as a member of the faculty of political science. While there he was the author of

number of textbooks in the field of municipal government and municipal administration. Since 1943 he has been working very closely in the State of Connecticut with the special committee on public expenditure, and has been working with the Legislative Council of the State of Connecticut. At the moment his position is that of consultant on government working as a special consultant to the National Municipal League. Dr. Reed, in addition to that, has had a wide experience in the drafting of charters for municipal government. He served as the Mayor of San Jose in California. He is now in constant demand all over this country for his advice in matters of reorganization of both state and local government.

I shall not burden the Committee with a further statement concerning his qualifications. It is perhaps important only to add, sir, that he has had the privilege of making a number of studies of municipalities in our own State and therefore comes to this meeting as an expert in government today, not only with a wide and varied background of government both at state and local levels, but with a knowledge of the municipal government of many of our communities here in New Jersey. It is a very great pleasure, Mr. Chairman, in behalf of the New Jersey Committee for Constitutional Revision, to present for your service, and I hope for the benefit of the entire Convention, Dr. Thomas H. Reed.

CHAIRMAN: Thank you, Commissioner.

MR. THOMAS H. REED: Mr. Chairman and members of the Committee:

Of course, one naturally feels a little hesitancy in coming out of one's own state to offer suggestions to people of other states who naturally know a great deal more about their state than he could possibly know. But I have had a somewhat long experience with some of these matters and I'm very much interested and was very glad to accept the invitation of the Constitutional Revision Committee to appear on its behalf to express my views with regard to these provisions in your tentative draft. I would say, on the whole I think the tentative draft is a very great improvement over the present provisions of the Constitution of New Jersey, and that you have already accomplished a great deal in what you have done. I have, however, one or two suggestions as I go along.

The first of those relates to Section I, subsection 3, where you provide for annual sessions of the Legislature, which I think on the whole is desirable, and you place no limit on the length of those sessions. I would suggest that it might be worth your while to consider the desirability of establishing a deadline beyond which new legislation could not be introduced except under special circumstances. Such legislative deadlines have been set up in a number of states. California is one of them. In California no bills can be

introduced after a certain specified time. It doesn't particularly matter how much, six or eight weeks after the beginning of the session, unless they are either accompanied by a message from the Governor expressing the urgency of the measure, or unless their introduction is approved by the whole house.

CHAIRMAN: Is that a constitutional provision, doctor?

MR. REED: Yes, that is a constitutional provision in California, and in order to make it stick, it really has to be a constitutional provision. That's one of the peculiarities about legislative procedure, that any rule of the Legislature which is violated is cured by passage of a bill. Courts will never go behind the action of the Legislature in overriding its own rule, or even overriding a statute. In order to make legislative procedures definitive and final, you more or less have to put them into the constitution. We have in our State of Connecticut, where I live, a great deal of trouble on just that score, resulting from reform rules that don't always hold water because the Legislature will violate them and the thing goes into the fire.

The advantage of a provision for a legislative deadline is that it gives you a longer time in which to consider bills theretofore introduced and gets away to some extent from the terrific lag which always occurs at the end of a legislative session. I don't mean to say that it will cure that entirely, because the rush at the end of a session is partly due to a certain facet of human nature that causes us to delay action until we are right up against the time when we actually have to debate it. That is just human nature and you're not going to get away from it. But it does mean that more serious consideration can be given to the ordinary course of legislation and it does not have to interfere, of course, with the introduction of bills which are necessary for any emergency purpose in the course of the session.

As a matter of fact, if you're meeting every year, and you have a month or two months at the beginning of the session for the introduction of bills, there is no very great reason why all bills can't be introduced during that period. I merely want to offer that as a suggestion for what, it seems to me, would be a slight improvement in the matter as you have laid it out.

My next suggestion relates to Section III which has to do with the apportionment of seats in the General Assembly. I have wondered why you could not provide an automatic system for the operation of apportionment. We have had a great deal of trouble in other states. I am not so cognizant of what has happened here, but we have had no reapportionment of Senate seats in the State of Connecticut since 1903, and there has been a great shift in population during that time. The Legislature simply fails to reapportion,

and when the Legislature fails to do anything like that, there isn't anybody who can do anything about it because there is no way of using any kind of court order upon the Legislature. The Legislature is a final authority unto itself, and if it does not apportion, the apportionment does not take place.

Now, Congress has provided, and some of the state legislatures have provided, for automatic apportionment. It is a perfectly simple thing, a purely mathematical process. You first set apart those representatives who represent counties where there is less than a normal quota—that is, less than the population divided by the figure of 60. Then you subtract the number of people and that number of representatives from the total number of people and the total number of representatives, and divide the remaining number of people by the remaining number of representatives. You then divide that figure into the population of each county, and if there are any representatives left over, you simply assign them to the counties that have the largest remainders, and in that way you have your apportionment done. There isn't any reason in the world why that couldn't be done by the Governor, or by some other state officer; or it even could be done by any responsible clerk. It's purely a matter of mechanics, and if you have such a provision you will get apportionment at a time when apportionment is ordered and not have the thing dragging on and on and becoming a subject of great political controversy, which creates a lot of public disturbance.

My next suggestion has to do with the provision of Section IV, subsection 6, where you provide for the three readings and where you provide that there shall be one day intervening between the second reading and the third reading except in the case of an emergency measure. It seems to me that you might have gone one step further than that. In the first place, it seems to me that you ought to provide that bills must be printed. Now, I know that it is your practice in New Jersey to print bills, but I can see no reason why you should not require the bill to be printed. Then I think that they should be reprinted when amended. Then I think you should go one step further and require that no bill shall be passed until it has been put on the desk of the members in its final printed form for a certain, specific time. In New York that period is three days, and that can be overcome by a message from the Governor, but even in that case the bill has to be on the desk of the members in final form, although not for the three days.

That is a protection against the sort of thing that we have been having happen in Connecticut. It may not have happened here, of course; you will be better judges of that than I am. We just passed a sales tax in Connecticut and I understand that you had a sales tax passed here some time ago. We just passed a three per-

cent sales tax. It was passed in the last hours of the session of the Legislature. It was a bill that was thrown together in committee and brought out and passed. I don't believe that anybody, other than a few members of the committee, ever saw the bill before it finally went through in its final form.

Now, it is really not fair to the public or the community, really not fair to the ordinary member of the Legislature, that that sort of thing should take place. We have some reason to believe that there are some very serious errors in that bill which has recently been passed in Connecticut that would not have been made if the bill had been on the desks of the members where all its terms could have been seen, where it could have been seen by the people affected by it. It seems to me that the object of these provisions is primarily to protect the public against hasty and ill-considered legislation and against what, perhaps, you don't practice in New Jersey but which they practice in some other states—some legislative chicanery which puts the bills through in a hurry at the end of a session without too much consideration on the part of the body as a whole. I offer that suggestion for your consideration.

You have provided for fixing the compensation of your members, and I certainly hope that the Legislature, when it comes to act upon that, will provide a reasonably substantial compensation. I think that the laborer is worthy of his hire and that it isn't fair to expect men and women to take time from their ordinary callings in life to work in the Legislature, without providing them with some reasonable compensation for it. You have provided that it should not take effect during the session that is then pending, that is, during the legislative year in which the increase or decrease is ordered. I am wondering whether it might not have been even better to have provided that it should not take place until the session following the next election of the General Assembly. Of course, some holdover Senators would still be getting the benefit of an increase in pay for which they might have voted, but there would have been an appeal to the people in the meantime on the whole matter, and the acceptability of the provision for fixing the compensation of the Legislature by the Legislature itself might be made greater by postponing it until after the next General Election.

Now, I have noted your zoning provision, which I think is a very good one. I am very glad that you have written that into the law, and I think that the provisions with regard to the acquisition of property by the use of eminent domain and so on is probably a fairly satisfactory provision. It might be clarified some. Any of you who will take that subsection 3 of Section VI and read it over, putting yourself in the position of the ordinary private citizen who does not know much about such things, will, I think, realize that

there is going to be a lot of questioning on the part of people as to just what that thing really means. Its language is a bit abstruse, although I think on the whole it is reasonably clear.

I am not going to say anything about this subject of gambling because I think that is a subject that should be solved by the comparative emotions of the people of New Jersey, rather than by any expert opinion. Subsection 5, however, of Section VII provides for setting forth in full a section that is amended, instead of simply being able to write an amendment without having the whole law alongside of it. It seems to me that there again it is possible that you could clarify the thing from the point of view of the public by requiring the use of some kind of sign or symbol to indicate new matter and omitted matter. I understand that you do that in practice in your bills in the Legislature, but it seems to me that it is a matter of so great importance that it ought possibly to be referred to in the Constitution as a means of making it as clear as possible to the ordinary citizen what is being done when an amendment takes place. I have an idea—I may be wrong about it—that by spelling out some of those sort of things in your Constitution, you increase the acceptability of your Constitution to the ordinary citizen who has to read it and make up his mind as to whether he wants it or not. Even though your practice at present is good and you may not seem to fully need any measure of the sort, it may be useful from that point of view.

CHAIRMAN: Doctor, may I interrupt you on that? I didn't quite get the force of your argument. Do you oppose this provision?

MR. REED: No, it is a very good provision. I merely suggested that you add to it the provision that omitted matter should be indicated by brackets or some other symbols, and that new matter should be indicated by underscoring or italics or something of that sort.

CHAIRMAN: All right.

MR. REED: So that everybody knows the bill is going to be 100 per cent clear to the reader when he reads it. We still do it in Connecticut by simply saying, "We amend the first sentence of section 6 by adding thereto the following," and let it go at that, which, of course, I don't think you do in New Jersey. But I think that if you put yourself beyond the possibility of doing anything of that kind by embodying it in the Constitution, you would perhaps increase the acceptability of the Constitution to the public.

Now, I come to the provision which I think is the most important one of all from my point of view, and that is the provision relating to home rule by cities. I listened with very great interest to the rather fervid remarks of Mr. Evans this morning. I judged that

some of the representatives of cities are pretty well stirred up over the question of the rights of cities.

I think that local self-government is one of the most important things in our whole governmental structure. If we don't have effective local self-government protected as much as possible by law, we are very likely not to have any kind of democracy at all. The state is a pretty large unit of government in which to operate democracy. The Federal Government is obviously so large that democracy is a very doubtful quantity in it. The real democratic survival is in the local communities, and if we lose it there, we are, perhaps, going to suffer a very great change in our governmental institutions as a whole. I think it is tremendously important.

I don't agree that there is, from the technical, legal point of view, an inherent right of local self-government. The only distinguished lawyer who ever contended that point of view was Judge Cooley of Michigan, who, in a case which involved a very gross legislative steal of certain official positions in Detroit, worked out the doctrine of inherent right of local self-government in order to be able to hold that act unconstitutional. Judge Cooley was the kind of a man who could do that sort of thing, and he has been very widely quoted, of course. But the law in most of the states is that the municipalities derive their powers from the constitution and from the legislature and that they don't have any other source.

I do think, however, that you ought to, in your new Constitution, emphasize if possible the importance of local self-government and the fact that the rights of local self-government and the privileges belonging to it and the opportunities belonging to it ought to be, so far as possible, protected by your Constitution, and that the Constitution should be interpreted by the courts in accordance with that understanding. As I understand it, in New Jersey there has been a disposition on the part of the courts to construe legislation relating to municipalities very strictly—more strictly, indeed, than in many other jurisdictions. I think that could partly be cured by some kind of a declaration on your part concerning the importance of local self-government. I think it could be also done by including in your document some kind of language providing for the interpretation of local self-government powers to insure that the municipalities will have not only the powers that are specifically granted but those which are naturally to be implied from the powers that are to be granted, and that you might have in New Jersey what may properly be called the standard definition of municipal powers which you get in the works of Dillon, McQuillan, and other authorities on the subject.

Now, here in subsection 10 of Section VII you have provided a means of dealing with the affairs of municipalities and counties by

special act, on petition of the governing body of the locality and subject to reenactment by the governing body of the locality. I can see the rationale behind the adoption of such a provision, because it is true that it is very difficult to provide for the affairs of municipalities by absolutely uniform law. Municipalities differ, and they differ not only because of their population but because of many other factors. In order to deal effectively with the affairs of municipalities, there must be some flexibility in the system.

Now, in New Jersey you have gone a long way toward a system of rigidity. You do provide optional acts which may be adopted by your localities, providing forms of municipal government. You do not provide any option for your counties but you do provide an option for your cities, but, as a matter of fact, it is a very poor option that you give them. You give them an option between the commission form of government, the manager form of government, or of going back to a very crude form of mayor and council government, which no one really considers satisfactory. The commission form of government, which is the one most employed in your State and the option most frequently adopted, is a form of government which has been going out of fashion in the United States. There has not been a considerable city in this country which has adopted the commission form of government in a generation, and there have been scores and scores of them which have been abandoning it in behalf of other forms of government. Your policy here in New Jersey, the policy of the Legislature, in setting up these optional forms, has been narrow and rigid, and that emphasizes the necessity of providing some more effective means of home rule.

Now, I contend that the people of a municipality have a right to choose their own form of government. There are certain well-accepted forms of municipal government that we all know about—the mayor and council form, commission form, the manager form, and so on. They, however, are found throughout the country in innumerable variations. It is very difficult to write a single form of commission government, for example, that would be applicable to all cities. You have one peculiarity here in New Jersey. You elect all your commissioners on a general ticket and then you allow them to apportion the jobs of commissioners among themselves after they have been elected. You may very well under that system get three men who are thoroughly well qualified to be commissioner of public works and nobody who is fitted to be commissioner of finance, or vice versa. It is a system which has not worked particularly well in New Jersey, and it certainly has worked, in my experience, very badly in some other parts of the country.

I have just recently been in a little West Virginia city where they have that same system, and where they have had to put in a

provision of picking them by lot when they can't agree as to who should get the job, but that's the *reductio ad absurdum* of the idea of assigning commissionerships by the vote of the commission. Some cities might prefer to elect their commissioners directly to the positions which they are to hold. Then the people would at least know that when they were electing a commissioner of public works they should not elect a dancing master, and that when they were electing a commissioner of finance they should elect somebody who had at least some comprehension of municipal finance.

Out in the City of Berkeley, California, where I used to live years ago, we had a commissioner of finance who was a bicycle repair man. He had an annual turnover in his business, I would expect, of \$2,500 or \$3,000 a year, and he was handling the affairs of a municipal corporation that was spending a million a year. It was just plain absurd. As a matter of fact, he did not do it at all. They happened to have an elective city auditor who was a good book-keeper and who knew how to keep things straight. The commissioner of finance could sit back and manage his bicycle business, and that was about all there was to it. But it is not a satisfactory arrangement.

Municipalities realize these things when they come to have a form of government for a certain length of time, and they want to change it. They want to change it in some detail or they want to change it in some considerable extent, and it seems to me that they have a right to do that—that it is proper that they should have the right to choose their own form of government. There are 17 states in the Union where that is done, where they are permitted to elect a charter commission who write themselves a charter and where amendments to the charter can be proposed either by initiative petition or by action of the legislative body of the municipality, in all instances subject to ratification by the people of the municipality, and in all cases that I know of, subject to the general laws and constitution of the state.

It does not mean that if you give municipalities home rule in the sense that I am talking about, you free them from the consequences or the effects of such legislation as your Budget Act and your financial acts of other kinds which you have adopted here in New Jersey and which are very excellent and are very much to be praised. It does not mean that they are relieved from those. It means that within the sphere that has been left untouched by the Legislature, they have the right to choose the form of government and the powers that they shall exercise. It is a practical method, it satisfies the public, it works effectively, and it gets away from the difficulty that is involved in this clause 10.

This subsection 10 provides that you will act upon the petition

of the governing body of the locality, and then the governing body of the locality will determine whether you have done it right or not and adopt it or not, as they please. But that is open to objection. Under this clause 10, as you have it, it would presumably be possible to do away, for any one municipality, with the protection that is afforded by the Budget Act and the other financial acts of which I have been speaking. It also is perfectly possible that a governing body of a municipality which happens to be in a friendly state of affairs with the majority in the Legislature for the time being, may put something through that the people of the locality don't want at all. I think if you are going to have a clause like this clause 10, you ought at least to make the referendum after the Legislature has enacted the bill a referendum by the people, not by the governing body of the municipality. Let the people decide whether the change is one that they want. I think that you ought to be very careful not to have that infringe the general laws of the State which are sound and of necessary import.

I submit that the system of the home-made charter is better all around. It relieves the Legislature of a lot of trouble. It takes a lot of time and energy off of the Legislature and its committees. It allows the municipality to settle things for itself, and it does not free it from the application of the Constitution and general laws of the State. You could, as they do in California, provide that a charter adopted by this means be submitted to the Legislature before it goes into effect. In California they provide that a charter shall be so submitted and that the Legislature must act on the charter as a whole. They can't amend it. They've got to approve it or disapprove it as a whole. The result is that, generally speaking, they are approved because a measure that has once been adopted by the people is something which the members of the Legislature naturally respect. On the other hand, if there has been a mistake, or if there has been an infringement of the necessary authority of the state, it can be corrected, and there have been instances in which that has been done. The City of Fresno, for example, once adopted a charter which would have, if it had been ratified by the Legislature, had no effect at all because it did not attach itself to the constitutional provisions of the state in the proper manner. The whole thing hung in the air, and the Legislature refused to ratify it, very properly, and the situation was straightened out in subsequent charter revisions.

As to giving the people an initiative in adopting their own form of government, it seems to me that it is one of the most popular and one of the most desirable changes that could be made. By giving your people some genuine home rule you are not engaging in an experiment. It is something which has been tried over and over

again and worked very well in many other states. You would be adding to your Constitution a provision which might well be regarded as one of its chief adornments. Thank you.

CHAIRMAN: Thank you very much, Dr. Reed. Do any members of the Committee want to ask Dr. Reed some questions? . . . Senator Lewis.

MR. ARTHUR W. LEWIS: Dr. Reed, I was very, very much impressed with your remarks. You have been most instructive and constructive. I would like to know, doctor, whether you could furnish to this Committee a proposed provision relating to this apportionment of Assembly representatives. You very briefly gave us the mathematical arrangement. I am wondering if you could furnish to us a clause that would embody your thought?

MR. REED: Yes, I could.

CHAIRMAN: Promptly?

MR. REED: I could do it within the next day or two, yes.

MR. LEWIS: Very good. On the question of printing bills, suppose we had such a provision in the Constitution and there happened to be a printers' strike. What would happen?

MR. REED: Well, that would be an awkward circumstance. There is no question about that. It is very awkward when a cow strays on the railroad track, but, on the other hand, you don't give up having railroads because it is possible to have it happen. You could provide that the bills, if you wanted to guard yourself against that, be printed or otherwise reproduced, and then you could offset them or do something else like that in case there was a printers' strike. In fact, I am quite sure that legally an offsetting process or mimeographing would be regarded as printing in the ordinary sense.

MR. LEWIS: In other words, there is no purpose in using the word "printing."

MR. REED: No, you don't necessarily have to say "printing." You may say "reproduced," "mimeographed," or "printed." You could use words that would enable you to use any of those processes, and then a printers' strike would not affect you.

MR. LEWIS: Doctor, you indicated that in your opinion the members of the Legislature should receive a reasonably substantial compensation. Are you prepared to give us your thoughts as to what that should be?

MR. REED: No, I don't think so, because I am not too familiar with the length of your sessions and the extent to which you are obliged to go to Trenton and live in order to serve the State in that capacity. In our State of Connecticut, of course, the legislators all commute. They all go home, and they are paid ten cents a mile each way for every day they attend the Legislature, so that members who live in Darien or Greenwich get perhaps \$1,500 a session

out of their mileage. They get only \$600 a year, or \$600 a term salary, as members of the Legislature, but those who live at a distance do pick up a little additional money, a little more than it actually costs them to travel, and they go back and forth home.

MR. LEWIS: What is the compensation in the State of California? Do you happen to know?

MR. REED: I don't remember, but it is, I think, two or three thousand dollars. I am not sure, but I think it is that.

MR. LEWIS: Is that consistent with your idea of a substantial compensation?

MR. REED: Yes. I would think that it should not be so high that people will go out to try to get the salary just for the sake of the salary. But it should be enough to enable a poor man to be a member of the Legislature. I think that is essential.

MR. LEWIS: Doctor, on Section VI, paragraph 3, you mentioned the language was somewhat abstruse. Could you particularize that for us to give us the benefit of your thinking?

MR. REED: I don't know that I can particularize it. I read it myself two or three times before I understood it, that's all, and the part of it that was difficult for me was toward the latter end of it: "may be authorized by law to take or otherwise acquire a fee simple in, easements upon, or the benefit of restrictions upon." I think that your committee on style, when it comes to polish this thing up at the end of the Convention, could probably put that a little bit easier than that. Those prepositions coming at the end of each clause like that are a little hard on the ordinary reader.

MR. WESLEY L. LANCE: Dr. Reed, while you are on Section VI, paragraph 3, I see the words there "to preserve and protect the public highway, etc.," down at the bottom. Do you think this subsection gives a full power of excess condemnation, or is it a rather limited one?

MR. REED: Well, it is a bit backhanded. I think that it might be construed by the courts that it did, and it is possible that it might not. Of course, your word "use" at the end there covers all the other things that preceded, and that in itself is pretty broad as far as the scope of the thing is concerned. But as to whether the word "protect" enables you to protect by buying and then selling, which is what you do under excess condemnation, is a question that I would not feel competent to pass upon. I think that is a legal question of a very high order, and you ought to get your best New Jersey legal talent to work on that one. There is a doubt in there as to whether or not you could actually use the process of excess condemnation to the extent of acquiring property which you were to make the subject of resale after the improvement has been made.

MR. LANCE: Do you think there is enough power in that clause for a municipality or county to buy, say, an 80-foot strip for an existing highway and then get 40 feet on either side for future development in the next one or two decades?

MR. REED: Yes, I think there is plenty to do that. I think there is plenty there to protect the highway or the use that is involved. But as to whether that protection would afterward involve the permanent retention of that strip, or whether they would be able to sell off part of it afterward—there is no question that you could take a 40-foot strip, for example, for the purpose of providing additional lanes to travel at a later date—but I think there is some great question as to whether you can take 150 feet with the prospect of selling off 100 feet after the improvement had been made.

MR. DOMINIC A. CAVICCHIA: Dr. Reed, on the question of apportionment, did I understand you to say substantially that the constitutional direction is reducible to this: that among those counties having more than the ratio of apportionment established by the census last taken, the number of members of the Assembly remaining after one has been awarded to each county having a population less than such ratio, shall be apportioned as nearly as may be according to the number of their inhabitants?

MR. REED: Yes, just about that.

MR. CAVICCHIA: Now, I say this. Of course, Dr. Reed, you and I are two old friends, but I am really asking this question seriously. You have been asked to write a provision that would provide for the automatic apportionment feature.

MR. REED: Yes.

MR. CAVICCHIA: Before you do that, if this is what you have in mind, I think you had better read the case of *State v Wrightson*, because I read the language of one of the counsel in that case, who is arguing for this. He said: "So we have it that the Constitution does not provide for equality of representation in the Senate, nor for equality of representation in the House, except as between those counties entitled to more than one member of the Assembly."

MR. REED: That is perfectly correct. Now, what I said was that you would first assign members to the counties that have less than the ratio, that is, who are entitled to one member only; and that then you would subtract the number of members so disposed of and the population that they represent from the number of representatives in the General Assembly and from the total population; and that then you would divide by the remaining number of members of the Legislature.

Suppose there are six counties that aren't entitled to more than one member. I don't know how many there are, but suppose there are six. That means that there are 54 seats remaining to be dis-

tributed. We will suppose that there are 4,000,000 people in the State, and that in those six counties there are 400,000 people. You would subtract six and you would get the 54 members, and you would subtract 400,000 and you would have about 3,600,000, and you would have 54 seats to be distributed among 3,600,000 people. You would make that division and get that quota, and use that quota on the remaining counties, which brings you equality of representation in the counties that are entitled to more than one member.

MR. CAVICCHIA: Dr. Reed, I think you are describing the very formula that was used for about 50 years, and which I discredited in 1941 by devising a new formula, because if we had adhered to the long-honored formula of long-time standing, Essex County, for instance, would have had to lose one member of the Assembly, going from 12 to 11 with a population of over 800,000. Under that same formula Bergen County, with a population of less than half of Essex, would have gained one, going from five to six.

MR. REED: Well, it's purely a question of who has the largest remainder. If, after you have made that division, a particular county has a larger remainder than another, the seats which are not distributed on that division will be assigned to each county in the order of their remainder, and it might happen that Essex County under such circumstances would lose a member one time, or that Bergen would gain one, or something of that sort. But it seems to me that that is better in the long run than it is to have the whole thing hung up year after year without getting an effective apportionment, and to make the question of apportionment a tremendous value.

MR. CAVICCHIA: In the past, every ten years there has been a postponement of the time within which the apportionment acts have been enacted, and there is evil in that. But I don't see any justice, for instance, in leaving Essex County with 11 representatives when they are entitled to 12.

MR. REED: Well, the question is: On what formula is it entitled to 12? You have got to have some kind of a formula, and you can't change your formula, or it doesn't seem to me that you should, from time to time, for the purpose of keeping up the representation of even as excellent a county as Essex.

(Laughter)

I sympathize with Essex County. I think Essex County is a wonderful county. It ought to have lots of representation. But it seems to me that the mathematics of the formula will work out in the long run, perfectly fairly. Of course, what might happen would be that Essex would be divided in such a way that Essex would have a small remainder and some other county would get an excess

number, just as Essex wouldn't. Now, such things will happen under the scheme that I suggested. The scheme I suggested is practically the scheme that is used by the Congress of the United States in apportioning members to the states.

CHAIRMAN: Dr. Reed, could you submit a provision which would meet your ideas on the constitutional grant of home rule for municipalities?

MR. REED: Yes, I think I can do that. That is a little harder to do than the other.

CHAIRMAN: I rather think it is.

MR. REED: It might take me a little longer. How soon do you have to have it?

CHAIRMAN: Well, tomorrow wouldn't be too late.

(Laughter)

MR. REED: Well, that is a little difficult. I don't know whether I will be able to do it tonight, but I will try.

CHAIRMAN: Well, we would like to have it, no matter how long it takes. The sooner the better. We have to have our report in by Thursday night.

MR. REED: I see. Well, all right. I will endeavor to submit that.

CHAIRMAN: Thank you, Doctor . . . Any further questions?

(Silence)

CHAIRMAN: Thank you very much. I am very much obliged to you, indeed.

Dr. Green.

REVEREND MARVIN W. GREEN: Senator O'Mara, I believe we have a rather unique situation today. For the first time in history, you have ten to twenty ministers present, and if they were each to present a prepared speech of 45 minutes, it would take to probably five or six o'clock tomorrow morning, missing all the meals. Laying aside this privilege, we will place before you a single joint statement.

Of course, we reserve the right, with the Committee's permission, for a few of us to register and further illustrate the unified position which we agreed on in a planned meeting prior to this meeting this afternoon. In other words, I am privileged to have been chosen to represent five of the following organizations: the New Jersey Council of Churches, the New Jersey Council of Church Women, the New Jersey Council of Religious Education, the Essex County Council of Churches, the Newark Ministerial Association, the Afro-American Assembly of New Jersey, the Hudson Methodist Parish, the Jersey City Clergy Club, and the North Hudson Protestant Clergy Club, the latter two both of Hudson County.

We wish, at the outset, to commend this Committee on the Legislative for its desire to leave the gambling question up to the people of New Jersey. One of the organizations listed above suggested this on two different occasions, as you have in your own record. This is, of course, democratic procedure, in that it lets a moral question be settled by popular vote, and that is praiseworthy.

However, the organizations I represent in this joint statement, representing in these organizations a constituency of perhaps a half-million present and potential voters, want to voice extreme dissatisfaction with the way this action has been put forward in your two Alternatives.¹ Our people have one of two choices. First, to approve gambling by voting for racing only in Alternative "A", or second, to approve gambling by voting for racing and charity gambling only. In either case, to vote at all means to approve gambling. Such a plight indicates that, consciously or unconsciously, we have been discriminated against.

We agree with the editor of the *Hudson Dispatch* that the proposals as they now stand are hypocritical, discriminatory and unsatisfactory. They are hypocritical in that some gambling is declared permissible, but other forms of gambling are declared wrong. Surely, gambling is either right or wrong. They are discriminatory in that commercial gambling is excluded in favor of charity and racing gambling. They are unsatisfactory for the reasons that follow:

I have been unable to secure the information, Mr. Chairman, which was touched upon this morning in your conversation with Mr. Van Riper. Perhaps if this information is known to all the members of the Committee you would be willing to restate it for purposes of clarifying the minds of the clergy. If the new Constitution is defeated, what would happen to the referendum vote? Is the referendum predicated on the passage of the new Constitution? Or is the present plan one to let the referendum stand sovereign, regardless of what is done with the new Constitution? Would you care to speak on that before I proceed further?

CHAIRMAN: Yes, I will be glad to. The Committee has not given any consideration to that subject, except very informally. One or two members of the Committee suggested that to put out this referendum as a basis for an alternative proposition in a proposed Constitution would not be quite fair, because it might have the effect of creating an artificial vote in favor of the adoption of the Constitution. Now, bear in mind that nobody—I suppose no member of this Committee yet—knows whether he or she is going to be in favor of the Constitution when it is finally written. We can't before we know what the Constitution is going to provide.

¹ The Alternatives appear in the Tentative Draft of the Legislative Article prepared by the Committee on the Legislative. The draft is reproduced in Volume II.

But the reason for the suggestion by at least one member of the Committee is that we should, perhaps, ask the Convention to frame this referendum in such a way that if the main question should fail, the alternative proposition which received the greater number of votes would be regarded as an amendment to the existing Constitution. Alternative "A" being the present clause in the existing Constitution, the present anti-gambling clause in the existing Constitution, those who desired "A" rather than "B" would be free to vote either for or against the Constitution as a whole, because it makes no difference. That is the existing clause. Whereas, those who favored Alternative "B" over Alternative "A", in order to have the vote in that regard become effective, would be forced to vote for the proposed new Constitution, no matter how they felt on the other provisions of the Constitution—unless "A" and "B" were put out as referenda which would have the effect of becoming amendments to the existing Constitution, if the new Constitution were defeated. The Committee has taken no action whatever on that. It is still up in the air.

REV. GREEN: Thank you, sir.

You can see, then, that this interests us greatly, and it is of great interest to our constituency. We have two possibilities: (1) the referendum predicated upon the passage of the new Constitution, and (2) the referendum sovereign and uninfluenced by passage or defeat of the new Constitution. Now, then, if the referendum predicated upon passage or defeat of the new Constitution passes, and if the Constitution passes, and Alternative "A" is voted, the new Constitution is left with the amendment of 1939 as we now have it in the present Constitution. But if Alternative "B" is voted, charity gambling takes a selective place along with racing, but with all other forms of gambling void.

If the new Constitution fails to pass, and the referendum is predicated upon passage of the new Constitution, and if Alternative "A" is voted, the vote will be void, since the referendum was predicated upon passage of the new Constitution. In other words, the 1939 amendment permitting only racing will still obtain, inasmuch as the present Constitution will still be in effect.

But, if the new Constitution fails to pass, and Alternative "B" is voted, by the same token "B" will fail, and our organizations will feel that we have won a partial victory.

But, if the referendum stands sovereign, regardless of how the Constitution fares, and Alternative "A" is voted, we would still have the 1939 amendment permitting racing gambling only; and if Alternative "B" is voted, you have your unconstitutional and, it seems to me, discriminatory and selective law, which will be passed, legalizing racing and charity gambling only.

Now, in the light of this analysis, and as the proposals now stand, our organizations definitely favor that the referendum vote be predicated upon the passage or defeat of the new Constitution. If the latter fails, whatever vote is registered in the referendum will become null and void.

We ask the question: Is Alternative "A" superfluous? From the point of view of our organizations, we want to ask the question whether or not Alternative "A" is superfluous? For, as it now stands, it looks as if it were a subtly veiled and vicious attempt to split our votes, so we will constitute no real challenge to either the racing or the charity advocates.

The racing advocates have in no way by public statement expressed hostility to or anything but complete accord with the charity gambling advocates. There is a reason for this, it would seem. Both groups will vote for Alternative "B" since all that is in "A" is in "B", and "A" will serve only to divide the opposition votes.

The racing advocates know what we know, that bingo is no real competition to racing; that it is a so-called "poor man's" gambling game. Further, they know that once the gambling fever takes possession of the bingo advocate, he will go out into the "big time" gambling. Therefore, they know that charity gambling will serve as a feeding unit for racing gambling. In short, it would appear to our organizations that we have been sold down the river of moral compromise for a guarantee both to the racing and charity gambling groups that their positions will be assured of success at our expense. Now, if this is so, this is unqualified discrimination of the lowest order. I hope, Mr. Chairman, that this only appears so. I am sure that your Committee had nothing of this kind in mind, but has merely fallen unwittingly into the plight of allowing our organizations no opportunity to register our own convictions.

It seems to us that your Committee has paid too much attention to the argument that we shouldn't override the 1939 landslide amendment favoring racing. The same argument could be used for the 1897 amendment which swept all forms of gambling from the State. Why not put it this way: We shouldn't override the 1897 vote. If it is argued that the 1939 vote was at a later date, we should remind all that this vote was taken nearly ten years ago. It is possible, even highly probable, from all the reports coming in, that the citizenry of New Jersey are beginning to get fed up with racing and racing gambling, and want a chance to register their conviction in a new and possibly a landslide majority, wiping the racing gambling legislation from our books. Of course, you have the discriminatory action presented today by this Committee. For, in every possible instance, racing gambling is protected, regardless

of the form the referendum vote may take, in being defeated, or in being passed.

So, therefore, we propose three proposals:

(1) That no referendum be held at all; that the new Constitution specify that the entire matter shall be left up to the Legislature. This is the historic position of the New Jersey Council of Churches, as they have taken their stand all along. We do not believe that the regulation and control of any specific evil such as gambling belongs in a Constitution. It is primarily a legislative and police function, and it is into the hands of these agencies that adequate regulation and control must be placed.

(2) If the Constitutional Committee finds that this is impossible or inadvisable, then we propose secondly that the 1939 amendment be written back into the new Constitution without a referendum vote. In short, Alternative "A" would be incorporated in the new Constitution.

(3) If this becomes impossible or seems inexpedient, then, in the name of decency and fair play, give our constituency an Alternative "C" patterned along the line of the 1897 amendment, whereby we can vote on whether or not we favor no gambling at all in any form.

We were happy to see in the morning paper that Mr. Arthur T. Vanderbilt, the Essex County Republican leader and Dean of the New York University Law School, has taken exactly this position, a position that was recommended by the Hudson Parish in the four-way referendum suggestion that you had on your own records several weeks ago. We are happy to see that public approval is mounting.

In conclusion, it is to be pointed out that had the proposal under Alternative "A" included the phrase, or its equivalent: "No further gambling be permitted than that contained as follows" and then Alternative "A", our organizations might then have felt our position had been partially recognized. But as the proposals now stand, we cannot help but feel that our efforts in attending these sessions and in presenting our views to Senator O'Mara's Committee have been useless. In short, we can vote for no further amount of evil to be allowed, but our convictions keep us from voting in favor of something we consider immoral.

I close with this warning word from Governor Driscoll, reported in the July 17, 1947 "Simeon Stylites" column in the *Bergen Evening Record*: "It would be difficult to legalize bingo without countenancing wide-open gambling." This, as you remember from this morning, was the position advocated by Attorney-General Van Riper, who said that bingo would probably open the doors to all gambling. None of us want wide-open gambling. If this great

Constitutional Convention does not proceed with great caution it will have either (1) wide-open gambling, or (2) the defeat of the new Constitution itself.

Thank you.

CHAIRMAN: Any questions? . . . Senator Lewis.

MR. LEWIS: Dr. Green, I understand that your first proposal is that the Constitution refrain from making any reference whatsoever to gambling?

REV. GREEN: That is right.

MR. LEWIS: You would then have no fear of the Legislature making gambling permissible?

REV. GREEN: I don't see that that has any place in a discussion at this Committee meeting, what our fears are in regard to what the Legislature might do. It doesn't seem to me to have any place in this discussion.

MR. LEWIS: I just wanted to elicit your thoughts on the subject.

REV. GREEN: I imagine that the groups which I represent might even be all split up on that, and I wouldn't want to give my personal opinion without consultation with them.

MR. LEWIS: Dr. Green, I would like to get your thought in regard to a proposal I mentioned this morning. That is, a proposal that the Constitution permit gambling as is now permitted in the present Constitution, and contain a provision prohibiting any form of lottery, commercial or professional gambling, with the further provision that the Legislature may authorize specific social games of chance, subject, however, to local option and local municipalities approving it. What is your thought in regard to any such proposal?

REV. GREEN: Senator, we appreciate the very difficult situation under which you men labor in trying to save the new Constitution, in the face of the various pressure groups. However, we feel that the words "local option" are a misnomer in your heavily populated sections of the country. If it were out West or in the South where you have many miles apart between cities and towns, local option is local option. It's local. But in your densely populated areas—for instance, if you permitted local option in Paterson, or Jersey City, or Newark to have gambling—there wouldn't be anything local about it. If you have checked with your transportation companies, you know that they swamp the available transportation facilities coming from other states, other cities, other counties. By the time the announced event of gambling begins to take place, there is nothing at all local about it. So that we would, I am sure, very firmly place ourselves against your proposal, inasmuch as local option would not be local option at all.

MR. LEWIS: Thank you, Doctor.

CHAIRMAN: Are there any further questions?

(Silence)

CHAIRMAN: Thank you very much, Doctor.

Mr. Charles Handler.

MR. CHARLES HANDLER: Mr. Chairman, and ladies and gentlemen of the Committee:

I appeared before you, I think, about three weeks ago, on behalf of the State Elks' Association, and left with you a memorandum of opposition on the gambling question. We are very pleased, and I wish to commend the Committee on its very careful preparation of the proposed articles of referendum on the subject.

I will criticize constructively the language of the Alternative "B", but before doing so, may I just briefly reply to the position taken by Dr. Green. The mere fact that Dr. Green so abhors a local option provision, the mere fact that he sees buses crowded with people traveling from city to city and from place to place, to engage in the innocent games of bingo or similar bazaar activities, and despite that, does not give the people of the localities, or would not give them the opportunity to pass upon such activities, indicates that these gentlemen have been so trapped with the mere word of gambling as a moral issue, that they have overlooked entirely the proposition that we are not functioning principally in a local parish of one kind or another. We are endeavoring to establish a fundamental law to govern the people in their customs and habits as we find them in 1947.

Now, if so many persons engage in these pastimes, shall we then continue in our Constitution a possible hypocritical situation that brands these people as some sort of petty criminals? I know there will be people here this afternoon speaking against any proposed liberalization on this subject. Yet, I am positive, as I said before, that in their homes or their friends' homes or with relatives, these families engage in what we call innocuous card playing. They attend church affairs where they raffle off a cake. They attend fraternal affairs where they have charitable books of tickets to help a distressed widow, and they attend veterans' affairs where they endeavor to help an orphan. They themselves engage in these practices to some extent, I am sure, and members of their parish and congregation engage in these activities. Why, then, shall we continue a situation where we will put these people in a category of legal violators? So far as they are violating the moral law, I challenge the doctor, or any other minister or rabbi or priest, to indicate to me that our moral fabric is so constructed that they will say that the many hundreds of thousands of people who engage in these activities are immoral by engaging in them.

In regard to the proposed referendum, let me say this: I am not passing on the question of whether or not gambling should be in the Constitution. I think, as a matter of fact, that the situation in New Jersey has gone too far really to dwell upon that. I fear that we have issued many millions of dollars worth of bonds, the support of which may in one measure or another depend upon race track income. I don't know. Since 1939 our fiscal policy may have been interwoven with that, so I will not stress a proposition to eliminate gambling from the Constitution and thereby perhaps destroy the receipts from pari-mutuel betting. But certainly it will have that in.

On the very next question as to the method of arriving at liberalization of the problem, this Committee is to be commended. You are submitting that to the vote of the people. Do they want it? Is it American and democratic to proceed that way? Or is it democratic and is it American to deny them the right to speak upon the subject and to desire, perhaps, to contain it, as in propositions No. 1 and No. 2,¹ and refer it to the Legislature where the same group with their same conceptions of morals will be able to bring a much more potent pressure to bear upon a small body of legislators. Isn't it a fair and decent thing—if you want to use such words and not try to arrogate them to your own little group—isn't it a fair and decent thing to submit that question to the people as a whole where the pressure of a small group cannot make itself felt so effectively as in a legislative hall?

As a matter of fact, the proposal by this group, in my opinion, is a very indecent and unfair proposition because by putting in a third Alternative they in effect would be dividing the vote of all those who sincerely believe in one form of gambling or another. By concentrating their vote on a third Alternative of no gambling they might very well create a situation where a minority would dominate the situation. I think, considering that in 1939 this State took the important step it did in this regard—whether we agree with it or not—I think that in view of the fact that our fiscal policy has been built around that, it would be unwise to disregard that mandate and go back. On the other hand, the mere existence of it and the mere threat of a possible defeat of the entire Constitution should not deter this Committee from doing the decent and fair thing in submitting the question of liberalization to the electorate.

Now, I would like a personal reference for the record, if I may. The last time I spoke about the fact that the State Elks' Association raised and spent, in a recent span of years, about \$2,300,000 for charities. I would like to make reference, for the record, to my own Lodge No. 21 in Newark. From 1930 to date it has raised

¹ Made by Reverend Green, the preceding speaker.

and spent for these purposes \$629,982.20. The figures themselves may not be impressive, but they indicate that there must be many, many thousands of persons participating in these enterprises.

Now, as to my criticism of the Article as written. If you really are going to submit the question to the people and take it out of the class of prohibition by constitutional fiat, then I think that you must give it the same benefit as the language of sentence No. 1 of Alternative "B" where you say, "It shall be lawful to hold, carry on, etc.," in regards to pari-mutuel. The second sentence you have there in italics should start the same way. It should start and read as follows: "It shall be lawful to carry on games of bingo and similar games of chance." Thereby you are taking it out of the constitutional provision. Otherwise, you are leaving it in a sort of legislative straitjacket where these same arguments can come up all the time and change from time to time, depending upon the complexion of the Legislature and the effect of these minority pressure groups.

Incidentally, I think the way you have written it is too broad. I think it may lead to mischief, and I would go on with that sentence as follows:

"It shall be lawful to carry on games of bingo and similar games of chance if conducted by volunteer firemen associations and bona fide charitable, religious, fraternal, or veterans' associations or organizations (*I add these words now*) that have been established and shall have functioned for at least ten consecutive years prior to the conduct of said game or that have been chartered as a bona fide local chapter by a nationally recognized and established organization."

I suggest that that sentence be substituted for the one you have italicized there, for the reason that it will first of all remove the constitutional prohibition without question. Secondly, it would limit the activity to a bona fide organization and you would incorporate in the Constitution a basic standard by which a Legislature could hold, so that any small group might not just organize overnight to take advantage of a legitimate social enterprise for the benefit of the pockets of a small group not entitled to the protection of such a provision.

CHAIRMAN: Would you eliminate the necessity of regulation by the Legislature?

MR. HANDLER: No. I don't think you would eliminate the regulation, any more than you do in regard to the race tracks. Or in regard to any other thing in the Constitution. They would still have in the constitutional provision the balance of the paragraph, for instance, and the right to make the rules and regulations and establish the penalties as heretofore. This merely sets up the basic standard to go by.

Now, that is all I want to say on the gambling amendment. I appear here also in regard to two other amendments which will take

a few minutes. But before I pass on them there may be some questions.

CHAIRMAN: Are there any questions in regards to the gambling amendment? . . . Senator Morrissey.

MR. JOHN L. MORRISSEY: Mr. Handler, don't you think your limitation of ten years would eliminate the veterans' organizations of the second war?

MR. HANDLER: That ten years would not refer to them. I was concerned very much with them, Senator, and I provided for a bona fide local chapter, chartered as a bona fide local chapter by a nationally recognized and established organization. If the American Legion, or if the new organization, the Amvets, should give a charter tomorrow to a local group in your county or my county, that would qualify them—if they have a charter from a nationally recognized organization.

MR. MORRISSEY: In other words, you don't mean that the parent organization has to be ten years in existence?

MR. HANDLER: Not at all.

MR. MORRISSEY: Don't you feel—do I understand you now; perhaps I misunderstood you the first time—do you think there should be legislative enactment regarding the carrying on of these games?

MR. HANDLER: Yes, I am sure there will be. This will not deprive the Legislature of the right to regulate the games, and to prescribe other standards; but the Legislature would not weaken the basic standard that you have established here. It could not allow any other organization. It would prevent, I suppose, some of the mischief that would accompany wide-open gambling that all of us would not care to encourage.

CHAIRMAN: Any other questions? . . . All right, Mr. Handler, proceed with your other subjects.

MR. HANDLER: I have other observations on two other provisions of the Constitution. I have them written. May I submit a copy to your Secretary?

CHAIRMAN: Yes.

MR. HANDLER: I refer to what Mr. Reed touched upon lightly, paragraphs 2 and 3 of Section VI.

I wish to call to your attention two proposals which are included in your draft of the Legislative Article. These proposals, serving a special as distinguished from a general public purpose, are the only ones of the type to have slipped by the vigilance of this Committee. I think they might be termed "sleepers." I refer to the proposals on zoning and condemnation. The proposed new zoning provision would change the existing provision in an important respect.

The Constitution now provides for zoning ordinances "limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use." The new provision adds the words "and the nature and extent of the uses of land."

The purpose of this is to authorize the regulation of the use of land (a) to provide approach zones and airport turning zones for a considerable distance, several miles from the landing fields; (b) to regulate or forbid the use in that area of electronic, electrical or mechanical apparatus or processes which would in any manner create electrical or other interference with radio communication between the airport and aircraft, or interfere with instrument or blind flying; (c) to prohibit the use of land within the radius of several miles from the airport which might make it difficult for flyers to distinguish between airport lights and others, or make any glare in the eyes of flyers using the airport, or impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking off, or maneuvering of aircraft.

This is not a fanciful deduction. Let me read to you, briefly, from an opinion of our State Supreme Court. I am reading from page 560 of the *Atlantic Reporter*, volume 40, Second Series, the case of *Yara Engineering Corporation v City of Newark, et al.* (reading):

"Newark adopted an ordinance referred to as the 'Airport Zoning Ordinance of the City of Newark.' In its preamble it recited that its purpose was to regulate and restrict the height of structures and objects of natural growth and to otherwise regulate the use of property in the vicinity of Newark Municipal Airport by creating airport approaches and turning zones and establishing the boundaries thereof.

* * * * *

The airport approach zones and airport turning zones provided for in the ordinance extend for a considerable distance, two miles from the landing field, which is called the Inner Boundary. No structure or tree may be erected or maintained within these zones in excess of certain heights ranging from 10 feet to 370 feet, the lower heights being in the zones nearest the Inner Boundary. Another provision of the ordinance prohibits any use of land within a two-mile radius of the landing area which would in any manner create electrical interference with radio communication between the airport and aircraft, or make it difficult for flyers to distinguish between airport lights and others, or make any glare in the eyes of flyers using the airport, or otherwise endanger the landing, taking off, or maneuvering of aircraft. This area was classified as 'second industrial' under the general zoning ordinance of the City, prior to the adoption of this ordinance. This area, as stated, was reclaimed swamp or salt meadow land, and its value, according to prosecutor's expert witness, depended upon its location and the condition of the fill. He testified that the prosecutor's land varied in value according to these conditions from \$6,000 to \$15,000 an acre if usable for industrial purposes, but if restricted to the use of the ordinance under review, the value would only be nominal."

Further, on page 561, the court in simple language concludes from

our American philosophy of protecting the individual in the ownership of his property, as follows (*reading*):

“To restrict the height or building of any structures or trees or to interfere electrically with communications or impair visibility by lights, etc., or in any way to use property within two miles of an airport to endanger the landing or taking off of its aircraft, as provided in the questioned ordinance, is an interference with the rights of property ownership . . .”

And that, gentlemen, is why this “sleeper,” this apparently innocuous zoning change, has been slipped in—to get around this reaffirmation of the rights of every owner of property, large or small. It is solely for the benefit of the large private air transport industry. No municipality would really want to steal from its citizens the property rights which they now have. Yet that is exactly what the proposed change would do.

There is a difference in the present constitutional provision and what is now proposed. The Legislature, in passing the present enabling statute, plainly expressed the true purpose of zoning. We quote from *R. S. 40:55-32 et seq.* (*reading*):

“Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health, morals or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.”

Under these present provisions, all of us desist from certain practices for the mutual and reciprocal benefit of ourselves and our property. We receive in equal share what we surrender for the common good. But under the proposed provision we may be actually surrendering private property rights without any return to the owner. The private industry would be using the space above our properties and would receive the benefits of the other property rights, of which we would be deprived, and this without any payment of just compensation to anyone.

We would be deprived, potentially, of more property by this clause than any other in the proposed Constitution. This deprivation would be an authorized depreciation of large areas of private property and would naturally decrease the value thereof to the loss of the individuals affected. It would lower assessments and increase municipal tax rates. It is fraught with so much mischief that it would be far wiser to retain the present, sensible, logical language than to attempt such a change.

The other proposal related to the provision to permit “partial condemnation.” The present provision of the Constitution is as follows (*reading*):

“Private property shall not be taken for public use, without just compensation; but land may be taken for public highways, as heretofore, until the Legislature shall direct compensation to be made.”

There have been hundreds of cases construing this provision. The body of law has been firmly and clearly settled in regard to it. People understand it, and accordingly leases, sales, deeds, mortgages and values are understandable and evaluated in the light of it. We know of no demand or public need for a change. If property is now taken for what we know is a public use, full compensation is paid to the private owner therefor. It may be argued that sometimes a public agency is obliged to take more of a person's property than is actually needed, and perhaps by the device of partial condemnation this might be avoided. The answer has been that after all, the public is paying for it, and therefore the cost is shared by all of us, including the citizen whose property is affected. In the meantime, all property has the benefit of the “full condemnation” provision.

Up to the advent of the air transport industry, this was satisfactory. But the courts are beginning to whittle down the misuse of the air space. In fact, there is now pending in our Court of Chancery a suit based upon the rights of property owners to prevent the unreasonable use of the air space over their properties. This is based on the theory that the owners of the land own the air space above it to the point of reasonable possession. This is a property right inherent in the ownership of the land. It is an attribute of property. Up to now, if you wanted to take a man's property just for the purpose of putting a road over it, you couldn't just condemn an easement through it. You can't tell the property owner to retain a property shorn of any of its attributes of ownership.

Who now seeks this change? I feel it is only the airlines, thinking to act through a municipality, or through a public agency, such as the Port of New York Authority, wherever the going happens to be easier. I believe that is why they are trying to insist on both these changes, the “partial condemnation clause” and the zoning changes. They fit hand in glove for this one purpose.

The changes proposed are not for the public good. They are designed to serve very special interests. They should have no place in the Constitution. They would prevent the true meaning of public zoning and would emasculate the virile condemnation provisions protecting private property so long as to have become traditional in our State. You have demonstrated up to now that you are here to protect the people's rights. We hope you will carefully re-examine these proposals—and reject them *in toto*.

CHAIRMAN: Are there any questions?

(Silence)

Thank you, Mr. Handler. . . Mr. Frank Fahy.

MR. FRANCIS X. FAHY: Mr. Chairman, members of the Committee:

I should like to thank you again for the privilege of appearing before you. The Catholic War Veterans of the State of New Jersey and the associated veterans' and fraternal groups of Hudson County have been and are of the opinion that provision for gambling should be made definitely within the Constitution itself. However, in the event that the Committee sees fit, as it has, to recommend a referendum to the people, we would like to offer this suggestion for revision in the wording. We feel that it should read thusly (*reading*):

"It shall be lawful for established publicly recognized veterans', religious, charitable, and fraternal organizations and associations to conduct and carry on bingos, lotteries, and games of chance. The authority to regulate and conduct these bingos and lotteries and games of chance shall be vested in the respective municipal authority."

That is our objection, as is obvious from these words, that this matter be placed in the control of the Legislature. We believe that the provisions should be made specifically in this referendum and the matter of regulation be left to the respective municipal authorities throughout the State.

CHAIRMAN: Any questions? Will you submit a copy of your proposed change?

MR. FAHY: Yes, I will.

CHAIRMAN: Thank you. . . Dr. Schneider?

REVEREND LEOPOLD SCHNEIDER: I am Dr. Leopold Schneider. I represent St. John's Methodist Church, of which I am the pastor. Also, I am a member of the staff of the Hudson Methodist Parish, of which my church is an active participant. I did not have the privilege of coming before the Committee before, as some of us are still studying. However, I would say this. Mr. Handler's remarks show an utter lack of understanding of our position, an utter lack of understanding of the basic fundamentals of the entire question. I do not feel that I ought to dignify his accusations with any further reply.

No one realizes more than I that the time for preachments is past. I would, however, add just one word to all that has previously been said. That is this: It is shameful that a moral issue, such as that with which each of us is concerned, has become a political football. The consequences upon the youth and younger generations in our communities, to say nothing of the corruption that would most certainly run rampant, will be most dire if the gambling laws, regardless of any guise in which they appear, were to be further liberalized.

I would add a hearty second to the propositions Dr. Green has presented to you this day. I cannot in all conscience advise my peo-

ple to vote for either of the proposed questions under discussion. The wording is such as to ask me to vote for one evil in order to bar another. This I cannot do. I would, therefore, ask you to eliminate from any further consideration both questions which have been proposed. If you cannot see your way clear to do this, then I would heartily advocate the elimination of question "B." I realize that you are more acutely aware of the economic reasons why even this might be impossible. If you, then, find this impossible, then I would insist upon the inclusion of a third question which would give me and my people the opportunity to vote against all forms of gambling, charitable or commercial.

In reading over the proposed question, there is one little phrase which intrigues me very much. That is this phrase of bona fide organization or charitable organization. The question immediately arises in my mind, who is to decide what is a bona fide organization? If the Legislature ought to decide it, the question will become clouded, because we find that the question is debatable in itself. We are ourselves perhaps split on the question of what a bona fide church is. If I perform a marriage as a Protestant minister, a Roman Catholic will not recognize that marriage. The Episcopalian Church does not recognize the Methodist order, and the Baptists do not recognize the Presbyterian baptism. The result of leaving that to the Legislature would lead immediately to a greater liberalization even that that which is proposed in your question. As a pastor knowing what is going to happen, I imagine the "pension fund of indigent beer drinkers" could get a permit to conduct a bingo.

Now, Massachusetts had this same problem before. They did legislate or make legislation permitting bingo and, I suppose, the other games of chance, and after it had gone on for awhile the mayor of Lawrence, Massachusetts, made the statement that of \$32,000, which was the income from these games, only \$700 actually found its way into charity.

I would like to add my sincere appreciation for the manner in which you, Senator O'Mara, and the members of this Committee have fairly and openly discussed this entire matter. I am sure your patience and kindness, as mine, have been sorely tried. Let us all hope and pray that the true spirit of a free democracy may prevail.

CHAIRMAN: Does any member of the Committee have any questions to ask of Dr. Schneider? . . . Thank you very much, Dr. Schneider.

Rabbi Louis Levitzky.

RABBI LOUIS LEVITZKY: I speak for the Essex County Board of Rabbis. To save a great deal of time for all of us here, I want

to state briefly that the position of the Essex County Board of Rabbis with regard to this referendum on gambling is as follows:

First, we deplore the necessity of including in the organic law of the State of New Jersey any reference to gambling at all. In the second place, since that seems to become a necessity, we feel that nothing further be done about it and that no referendum be held at all; that the new Constitution specify that the entire matter shall be left up to the Legislature. Third, if the Constitutional Convention finds that this is impossible, or inadvisable, then we propose that the 1939 amendment be written back into the new Constitution without any referendum vote. You will note that this is practically the same wording as that which was given to you by Dr. Green on behalf of the group of churches and clergy.

CHAIRMAN: Thank you very much, Rabbi. Are there any questions anyone would like to ask of Rabbi Levitzky? . . . If not, thank you, Rabbi. . . . Mr. Harold Crane is next.

MR. HAROLD CRANE: I am speaking in two capacities: first, as the General Secretary of the Essex County Council of Churches, and further, as the Chaplain of the American Legion of Essex County.

First of all, we endorse very heartily the stand as presented earlier by Dr. Green. Our committee, our board of directors, go a little further than the New Jersey Council in desiring the principle of gambling to be labeled as both immoral and unhealthy for America. We have the very distinct desire to avoid either broadening gambling or allowing any type under any guise under any sugar-coated name.

We decide these matters on the basis of the good of the people. We think you will want to decide them on the basis of that same good. We do not call names. We have been called some this afternoon. I won't dignify those by a reply. But I do ask you sincerely to believe us when we say that we have known of no constructive good to the individual, to his family, to his town, or to our State from gambling in any form. We do not wish it. We would like to go back to the Constitution of 1897 in this particular, and outlaw all gambling.

In addition, we have a very strong feeling that it is a definite mistake and unfair assumption for any of us to feel that Protestants, Jews, or Catholics can be spoken for as a group without exception. We have a very strong feeling. We know that Protestants do indulge in some of the gambling that has been going on, and we deplore that fact. We also know that many of our Jewish brethren and many of our Catholic brethren are just as much against gambling in all its forms, bingo included, as we are ourselves. In other words, I'm trying to point out that we do not assume at all that

this is a religious issue. We do not assume that it is entirely a moral issue. We do assume that large numbers of New Jersey citizens, wishing for the full welfare of our children and our families and our communities, are strongly opposed to gambling in any form. We do not call any names. We do not say that we are entirely right and everybody else is entirely wrong. But we make our own stand very clear.

Now, speaking as the Chaplain of the American Legion of Essex County—not for them, but to point out to you the stand or lack of stand of the New Jersey Department of American Legion—the American Legion is the largest veterans' organization. It has not in the State of New Jersey taken a stand upon gambling. We know that some posts have favored it. Some individuals have favored it, and vice versa. But I want you to note that the American Legion does not ask the people of New Jersey to have more gambling in our State. There again, some legionnaires are for, some are against, and nobody has the right to speak for all the American Legion members.

I thank you for the opportunity to appear before you.

CHAIRMAN: Any questions? . . . Thank you very much.

Mr. Russell Stanton is next.

MR. RUSSELL STANTON: Mr. Chairman and members of the Committee:

I come here as State President of the Fraternal Order of Eagles. I represent the Fraternal Order of Eagles in New Jersey in the role of State President. Our membership is approximately 40,000 within the State. We have almost a million and a half members on a national scale. Those residing in New Jersey ask the consideration of this Committee and recommend to the Convention that bingo be legalized in New Jersey.

Bingo should be under the discreet supervision of long established churches, lodges and veterans' organizations which are affiliated with a national organization. I personally, and the members of our organization, are not in favor of one-man clubs of professional gamblers, such as are carried on in some of the nearby states. We don't want them to have such privileges. In the Fraternal Order of Eagles in New Jersey, as in other similar fraternal organizations, the proceeds which will be derived from the honest operation of bingo will be used largely to be of service to its members, to be of service to the community, to contribute oxygen tents and iron lungs to the hospitals, to aid the poor and the disabled, to give scholarships to encourage school children, to promote social and non-political activities within the community, and to encourage and aid the curbing of juvenile delinquency which is the foremost topic of our national organization.

We think it should be properly legislated, and if the Constitutional Convention sees fit to have it included in the Constitution, that would suit us. But in the event that it doesn't, we think that it should go before the voters of our State in the pure democratic American fashion.

CHAIRMAN: Any questions? . . . Thank you very much, Mr. Stanton.

Reverend Curtis B. Dyer is next.

REVEREND CURTIS B. DYER: I'm a Methodist clergyman, Senator, from Newton, New Jersey. I'm speaking for no one but myself, but I am associated in general with the statement that has been made by Dr. Green for the State Council of Churches, and with those provisions I'm in hearty accord. It seems to me only a matter of fairness that the Committee should allow those of us who are opposed to gambling on principle an opportunity to vote that principle, rather than to have to choose between two alternative votes in favor of gambling. I'm hoping you will so arrange. We certainly believe in the state-wide referendum that gives the people the right to vote democratically, and accept whatever the verdict of the people is.

I'm not going to take up the 45 minutes that Doctor Green suggested ministers were prone to, but I would like to point out two or three items that I think have hardly been touched on, that seem to me to be important, and that might have some weight with your Committee.

The first is that when we are talking about gambling we have these representations from members of fraternal orders and social groups, and we picture people with a little extra spending money sitting around harmlessly playing bingo; or people out for a good time at a seashore resort, perhaps having their good time blighted because it is not legal, or some idle rich boys around a race track gambling, and any kind of an anti-gambling law just seems to prevent a few people from having a lot of innocent fun. I'd like to point out that while all of those things are true, relatively speaking, that it is very largely the youth of the State who get into gambling of one sort or another, and as a clergyman and a man who has been in education, I'm very much worried about the kind of results of any kind of gambling upon youth.

I know that many of our young people have come by and are interested in gambling quite honestly. I myself am a veteran of the First World War, and I know that when a boy is in a battered town or a jungle or some place like that, where there is no form of amusement, and has nothing to do except what he can devise—and not all soldiers have the disposition or the interest to carry a pocket edition of Shakespeare along to read—that some form of petty

gambling may be the least of a number of evils. But that is not so when you come back to civilian life. You have to consider the youth of our country who have been exposed to that kind of thing quite innocently and through no fault of their own, and whose associations now with bingo or poker or anything else are just those of good comradeship under hardship. We have an American tradition that people do not expect something for nothing; that we work for what we get; that our own initiative and our brain supply it, and not the turn of a wheel and not the fall of the dice. These things are rather deep-grained in American people. I know that petty gambling is indulged in by a large number of folks because of some frustration and the need for adventure. It is a very fine thing that we have this thirst for adventure. It is a very normal human attribute. Gambling is a very poor substitute for the real thirst for adventure and making something adventurous out of life.

Then I would like to point out, if I may, as the Attorney-General pointed out this morning, that the manipulation of large sums of money in race track gambling, which inevitably makes a connection with political action in a State, does a tremendous amount of violence to the very thing that this Constitutional Convention and your Committee are working so hard to set up, and that is calm, clear, democratic action by people conscientiously engaged, and not subject to undue pressure by groups that have a profit stake, a selfish profit stake in the outcome of the legislation. I think it would be very worthwhile—I assume your Committee has done it to some extent already—if you would investigate further the financial benefits to states and communities that have had gambling, wide-open or limited to race track gambling, over a period of time—not only the financial benefits, if there be any, but the influx of undesirable citizens from beyond the state borders or from beyond the municipal borders into that community. There are a very great many liabilities that go along with any supposed revenue that may come from gambling.

May I say in closing, briefly, that I realize what a tough proposition your Committee has. You can't please us all. There are a great many angles to this. There are a great many persons for whom gambling isn't a moral question, but just an innocent diversion. But some of us see in it wider issues than those of just innocent social pleasure, which we do not want to limit or injure. I hope you will go along with us and try to stand by us in principle, and give us a chance to vote for that principle. Thank you.

CHAIRMAN: Thank you, Dr. Dyer. Does anybody want to ask any questions? . . . Thank you very much.

Mr. George Gold.

MR. GEORGE GOLD: George Gold, Chairman of the New

Jersey Federation of Theaters, which comprise about 90 per cent of the 400 theaters in the State.

In all the arguments that have been presented today, of course, nothing has been said to you about the position of the theater owner. I think that position ought to be made known to you, because bingo was very commonly played in theaters until the enforcement authorities clamped the lid on and said, "No more." I want to point out that in the theater bingo was an added attraction to a regular show, without any extra cost. The patron played perhaps five games; some of them won something, others didn't. No one was hurt. Everyone went home and the winners were mostly satisfied.

Under the proposed Alternative "B", I want to point out that the theater receives no consideration whatever. You are allowing organizations of all kinds under the guise of being fraternal or charitable, and it is very easy to assume such a guise, to play the games. I think you should know, too, that the reason the enforcement authorities stopped bingo in the State was that professional promoters were taking most of the money away with them and giving very little to the charitable or religious or other organizations that played the game. That ought to receive your very careful consideration, because, in any event that should not be permitted.

I want to close with this thought. We don't condone gambling. I'm not going to pass upon the morals of the issue; you have heard that from the reverend gentlemen who appeared here, but I do want you to consider that it is discriminatory as it now reads and that it sets up unfair competition to the theaters of this State, which, in many cases, are big businesses. They pay large taxes and ought to receive your thorough and full consideration. Certainly it is unfair competition if you permit any group of persons anywhere in the neighborhood in any municipality to have bingo games, which are, of course, a great temptation for many people to come and play, thereby competing with the normal and proper business of the theaters of the State. I urge you to give this your thought.

CHAIRMAN: Are there any questions? . . . Thank you, sir.

Samuel S. Swackhammer.

MR. SAMUEL S. SWACKHAMMER: I recognize the fact that I'm in the presence of thinking men and women. I realize from the questions you have asked and from other signs that you stand high in an intellectual atmosphere and that you have incorruptible integrity. So in coming before you, I have the satisfaction of knowing that I'm speaking to people of that kind. I am not undertaking to say that I know it all, or that I am infallible. I tried that once and it didn't work.

I had a case where a man on the opposite side was the star wit-

ness, and I heard that he was a non-believer, or an atheist. When he started for the witness stand, I said, "If Your Honor please, I want to examine this witness on his *voir dire*." He says, "What does he say?" The judge said, "He wants to know if you are a fit man to take the witness stand." I said, "Mr. Hand, do you believe in the Bible?" "Maybe I do." I said, "Do you believe that it was inspired?" "It might have been." I said, "Mr. Hand, I'm going to ask you a direct question and I want a direct answer. Do you believe in the existence of a God?" "Yes, I do, and a damned merciful one, or he wouldn't let a shyster like you stand here making fun of a witness to try to win your case."

(Laughter)

I told the judge I thought he was a qualified witness.

Now, I am here to give my opinion, and I want to do it very briefly because I know you have had a great deal of argument against gambling. The question that confronts you here is, is gambling right or wrong? In the celebrated debate between Stephen A. Douglas and Abraham Lincoln, Lincoln kept posing this question: Is slavery right or wrong? The governor knew if he said it's right, he would alienate all of the North; and if he said it was wrong, he would alienate the South. So he didn't know what to say.

Now, the question here is, is gambling right or wrong? If anyone is in doubt upon that question let him read the *Modern Battles of Trenton* by Sackett, who describes what happened in 1892 when the gamblers on the race track were in operation. That author shows that gamblers owned the President of the Senate, and the Speaker of the House, and the whole Legislature. He showed that the crimes which were committed at those tracks were indescribable, and when the people found that things were like that—that a grand jury wouldn't indict a man who was connected with that crime, and that many judges wouldn't punish him—the Senate was aroused. One of the great ministers of Union County preached a sermon against it, and all the preachers in that same county preached similar sermons. They formed a league against gambling and this preacher was made the chairman. He led 5,000 men and women down to Trenton to protest. But the door of the Assembly chamber was locked against him, and they thought that the Speaker, Flynn, had it in his pocket, but they found the key and got in.

Some of the mightiest Philippics were delivered there that I ever heard, or that anybody else ever heard. Those men nailed that crime to the wall and showed that it was an iniquity indescribable. The speeches that were delivered there in the Assembly chamber were so convincing that the gamblers were put to flight.

I imagine that you ladies and gentlemen have studied this question but, perhaps, you have been too much engrossed with other things to get to the bottom of it. A friend of mine went to Monte Carlo. He said that in that den rich people would come in. They stand by that green table. Monte Carlo is a place where they pay the taxes with the money they get from gambling. He said they would strip themselves of everything and when they lost everything they would go into the suicide's graveyard in back of the den and kill themselves. He was there himself and saw it.

Now, if there is any question about the morality of this thing, it ought to have very careful consideration, because that is really the pivot of the whole thing. President Johnson said: "When vice makes a compromise with virtue, vice always gets the best of the bargain because vice is cunning and has its ways of doing things and often men are deceived." Now, when we look at this question, some say it isn't a moral question, some do, and they are honest about it. I have no quarrel with their opinions. They say that it makes hypocrites and law breakers to have a law against gambling. Yes, and the Ten Commandments has that effect too. I never could keep the Ten Commandments completely. Could you? But would you abolish the Ten Commandments, the Decalogue? We are having numerous murders every year in this United States of America. Would you banish and strike out the law against murder? We have to come down to these vital questions.

When you draw this revised Constitution, you are expressing the sovereign will of the people of this State. You can't emphasize the truth or the falsehood of a proposition more than to put it into the organic law of the State. You have here a very intricate and a very important problem before you. Now, if you should vote or act in favor of gambling, suppose whoever should take that stand should have his son say to him later on, "I'm a gambler. But you said it was all right. You put it in the fundamental law of this State." How would you answer that? We have to be honest with ourselves and with the people. This act which you are performing affects the whole State of New Jersey. Every citizen is bound by your act, for the Constitution is superior to any statute that can be passed in the Legislature.

Now, if gambling is wrong, why retain it? They say that men must have an opportunity to do this or that. I don't believe in the blue laws, but this I do believe in, that man is not a mere animal groveling in the dust. The human mind is the breath of the Deity, the fire of His kindling, the immortal soul bound on its way to eternity. Every other creature hangs his head; man alone looks up to God and the stars. If we pass upon a subject of this kind indifferently, we are certainly in the wrong, and I know that no man or

woman in this panel here would do it. I have the utmost confidence in every one of you and I have had the privilege of hearing your views, but in this case it is supposed to be a controversial question. I hope it isn't. I hope we have to say "yes" or "no" and stand by that decision. When a man makes that vote, or takes that attitude, he stands before his fellowmen and before his God. There is no escape.

If it is true that gambling has been such a monster of depravity and wickedness, why call it anything but gambling? In the *Congressional Record* a few days ago, one of the Senators, referring to the different crimes and misdemeanors, said that gambling was the worst of all.

I know you will take it under consideration.

CHAIRMAN: Thank you very much, sir.

Mr. Peterson, A. LeRoy Peterson.

(No response)

CHAIRMAN: Mr. John Winans.

MR. JOHN WINANS: My name is John Winans, of Plainfield, New Jersey.

Mr. Chairman, ladies and gentlemen of this Committee:

I came to speak for the New Jersey State Elks' Association on the question of the alternative proposals. Mr. Handler has so completely handled that matter for the Order of Elks, supplemented very ably by the representative of the Fraternal Order of Eagles, that it is unnecessary for me to add anything to what they said.

I will, therefore, speaking for myself, endeavor to correct a few statements that have been made here. One speaker referred to the experience of the State of Massachusetts when \$32,000 was collected as the result of some legalized games of chance. I refrain from using the word "gambling" because it is a matter of opinion where the division line is to be drawn. Is an insurance company a gambling concern? Is a merchant who buys on the market a gambler? A stock trader? Is the man who matches for the payment of the dinner check? Where does the line between gambling and mere games of chance or taking a chance lie? Everyone's mind, perhaps, differs on that subject, so I refrain from using the word "gambling."

It was said that only \$700 of that \$32,000 was devoted to charity. Speaking for my own Lodge of Elks in Plainfield, of which I am Past Exalted Ruler, I will say that for two years, while there was a question of whether bingo was lawful or unlawful, our lodge conducted games which gave great satisfaction to vast masses of people to which no one objected, and that every penny raised from those games, aggregating some \$5,000, definitely went for charity—mostly for the outstanding crippled children's work and for all of the diff-

erent charities which I won't enumerate because you are probably familiar with them, to which the Order of Elks is committed.

Another proposition was that there should be a third Alternative, to abolish all forms of gambling or games of chance in this State. That would be eminently unfair because those who believe in regulated games of chance, such as proposed by the second of the Alternatives, would be put at a disadvantage. All of the people that were against all forms of games of chance would vote for the third proposition, so opposition would be divided between two other propositions. Obviously all the opposition would have to do would be to control a mere one-third of the vote. That is the second matter I want to refer to.

Another thing the last speaker, Mr. Swackhammer, who comes from my own city, spoke about happened back in the 1890's. I'll correct him. It was at the legislative session of 1893 when the race track laws were passed. William J. Thompson, known as the Duke of Gloucester, had the Senator from his county as President of the Senate. Tom Flynn of Passaic, who was the official starter of the races at the Clifton Park Race Track, was Speaker of the Assembly. The dominant party then was in power to the extent of 40 to 20 in the Assembly and 14 to 7 in the Senate.

CHAIRMAN: It hasn't changed much.

(Laughter)

MR. WINANS: It changed the following year.

CHAIRMAN: Well, it swung back again.

MR. WINANS: The Legislature under the whip of party leadership passed laws that a great many of us, many of whom belonged to the dominant party at that time, objected to. One was chapter 16, which permitted any racing association to be licensed by the board of freeholders, or if they couldn't get what they wanted there, to go to any township committee and get a license to run a race track with no conditions imposed.

Chapter 17 of the laws of that year stated that any association which permitted bookmaking to take place on its grounds should not be liable for running a disorderly house, or for conspiracy to violate the laws. Those are on the statute books of the session of 1893, not 1892.

Chapter 18 provided that bookmaking was a constitutional crime. The Legislature couldn't abolish it. However, it went as far as it could and provided in chapter 18 that the penalty in such case should be \$20. All the race tracks, of which there were many in those days—those that I remember were Clifton Park, Guttenburg, Elizabeth Park, Linden Park, the old Monmouth Park, predecessor of the present one, and Gloucester Park—provided a convenient justice of the peace to be always right near the main entrance gate,

and if anybody should be arrested he certainly would be in friendly hands. The result of which was that what little law had to be enforced, because it was in the Constitution, came before a very lenient tribunal.

During the following summer a great many persons rebelled against that. Richard B. Lindabury, a lawyer in Newark, was the leader and head. He belonged to the dominant party but wouldn't stand for race track legislation. A great many others are listed. I had in that year of 1893 the nomination of the then dominant party for Assembly in the old third Assembly district of Union County—that was the last year when we elected members of the Assembly by Assembly districts. I, along with a great many of my fellowmen, was swept into oblivion in that election. The complexion of the Assembly changed from 40 to 20, to 22 to 38, almost a complete reversal. The Senate complexion was also changed.

That was the year of the Rump Senate. James A. Bradley was elected Senator from Monmouth County. He was a brush manufacturer in Pearl Street, New York City. He had a lot of little scrubbing brushes made and a placard put on them, "Scrub Monmouth County Clean"—I had one of them in those days—"Elect James A. Bradley Senator." There were no corrupt practices laws, as we have them now, enforced in those days, but the Senate being a holdover continuing body, and the clerk being charged with the duty of making up the roll, made it up and eliminated Mr. Bradley because of corrupt practices. He had bribed the voters with his little scrubbing brushes, and he was excluded from the Senate chamber. I think the Senator from Monmouth County, of the formerly dominant, now the un-dominant party, was Henry S. Terhune of Red Bank. He was seated. In the meantime, the party which had now become dominant had its Senators, with Mr. Bradley making the eleventh one, meet in the rotunda, and for a week or two we went on having two Senates.

But the misfortune was that the formerly un-dominant but now dominant party had elected a Governor and had complete control of the Assembly, and neither the Governor nor the Assembly would recognize the Senate. If the Senate enacted a bill there was no place to send it. If the Assembly enacted a bill they sent it to the Rump Senate, and that went on for quite a while. In the meantime, an application was made to the Supreme Court. I don't know whether it was *quo warranto* or *mandamus* or some prerogative writ. The court held that that was a matter which was exclusively in the jurisdiction of the Legislature, which is the sole judge of the election returns and the qualifications of its members, and that they could not interfere. It was a political question.

The result was that the Senate that was sitting in the Senate

Chamber just faded out, and eventually the Rump Senate moved in and became the real Senate. Immediately it got busy and repealed the race track laws, chapters 16, 17 and 18, and then it started machinery which resulted in the amendment of 1897.

Now the pendulum keeps swinging back and forth. At that time it had swung far to the left, may I say? In 1939 it swung the other way. It will eventually come to a point in between where it will rest in equilibrium. It seems to me that it is up to this Convention, as led by you gentlemen of the Legislative Committee, in your particular field, to establish that equilibrium and decide what is gambling and what is an innocent game of chance.

I thank you. I have talked longer than I expected.

CHAIRMAN: Are there any questions?

(Silence)

Thank you very much, Mr. Winans. . . Mrs. Ralph Barbehan?

(No response)

CHAIRMAN: Mr. Anthony DeFeore.

MR. ANTHONY DEFEORE: Mr. Chairman, members of this Committee, guests:

I am here today from Union City in Hudson County, as the spokesman for the following organizations: Hudson County Republican Committee, Hudson County Progressive Council, Republican Veterans' League, the Young Republican Organization of Hudson County, and the Republican Council of Hudson County. These organizations have asked me to state their position on the gambling amendment.

These organizations favor the Alternative "B" method¹ because it will permit the playing of bingo and other games of chance, which they feel are not entirely gambling. However, they specifically provide that the referendum should specify the types of gambling to be permitted. As to regulation, these organizations feel that the referendum should empower the Governor to appoint a commission to regulate, or the referendum should empower the various municipalities to regulate, to regulate, bingo or whatever type of games of chance are permitted.

These organizations which I represent feel that the right to play bingo should go only to church organizations, fraternal organizations, and veterans' organizations. They feel that way because they feel that these organizations do charitable things that enable society to become better.

We should also not lose sight of the fact that to permit bingo to be played would mean revenue for the State and relaxation for the older citizenry. By that I mean, I am a veteran and have served

¹ The Alternates appear in the Tentative Draft of the Legislative Article prepared by the Committee on the Legislative. The draft is reproduced in Volume II.

overseas. While I was overseas my mother found a great deal of relaxation, just as other mothers did, in attending these bingo games. I, and the organizations I represent, do not feel that our mothers attended these functions as gamblers.

At this time I want to thank the Committee for permitting me to speak, and I want to commend them for the fine work they are doing here.

Thank you.

CHAIRMAN: Thank you, Mr. DeFeore. Are there any questions?

(Silence)

CHAIRMAN: Thank you very much.

Mr. Cyril Hannon.

(No response)

CHAIRMAN: Mr. Charles Becker.

MR. CHARLES BECKER: Senator, members of the Legislative Committee:

I represent the State Department, Council of Administration, of the Veterans of Foreign Wars. As their State Legal Advisor and Judge Advocate, I want it to be understood that I am not representing a pressure group, nor do we represent anyone here who has attempted to lobby or appear before this Committee in reference to this question of games of chance.

The membership of this organization is over 50,000 in the State of New Jersey. I speak exclusively for the Veterans of Foreign Wars, although I am a member of the American Legion. Throughout the nation we have a membership of over 2,500,000.

We are definitely in favor of this question of a referendum to be presented to the people on the question as to whether or not they want bingo, a raffle, or a game of chance. I for one do no gambling whatsoever, and I know that the situation as it exists in this State is practically beyond the control of the law enforcement representatives of the community. We know that gambling is here and it is here to stay. But we want it controlled.

I am asked to appear at a jail and I meet a man or woman who was caught in the trap for so-called gambling. And who lets me in to see him? It is one of the guards who does gambling himself. The other fellow is in jail, and the guard is free. You can walk through the City of Newark and see some of the finest representatives of our residents of the community, and they are gambling. They are definitely playing the numbers. You can see it on the street, you can see it in the alleys, in the doorways—and the police authorities can't take over or control it.

Now, if gambling, if you call it as such, is a game of chance, is it going to be controlled by the State? We are for state control and not for any one municipality to do so. We want a uniform law and

uniform rule and we can only get it through state power and state authority.

We know well enough that businesses have gone in for gambling. Take the chain stores, for instance. You go in there and, even today, you are handed a ticket and you wait your chance as to whether or not you are going to get a choice piece of meat, but it's gambling nevertheless.

Now, I say and say again that you see the children walking the streets and selling games of chance, and they have the nerve to walk into taverns. I think it can be controlled through the state authorities. We control and regulate the sale of milk. We do so with barbers and I think we should with gambling. It's not widening the scope of gambling; it's just to control it and it is the only means of controlling it. If I thought gambling could be eliminated in its entirety, I would be for it. But it can't be done—not under the circumstances of today.

The Veterans of Foreign Wars have for approximately 50 years been rendering services of every conceivable kind, especially service to our disabled comrades in the hospitals. Our government is certainly able to furnish the medication; the same with our state authority, whether it is at Vineland or Menlo Park. But they do not furnish the entertainment, or what we consider the proper refreshments or cigarettes. We are able to raise some money for those purposes.

I belong to many organizations, approximately 30 or 40, and I say to every one that behind closed doors they are playing games of chance. Why make criminals out of the residents of our great sovereign State? You can walk along the boardwalk and there is gambling right in the wide open. Now, why should a certain classified few be permitted to derive these benefits?

We want to eliminate the promoters. It is true they were getting the greater portion of it, and I think it should be up to the Legislature to decide what is a bona fide organization. I say that the door should be open to those organizations which have proven to be organizations with exemplary records of charitable dealings and charitable understanding, and this would at the same time give the State a revenue.

I appeared before Senator Read on the question of tax exemption, representing the same veteran organizations, and he said: "We don't want to be an Indian-giver to the veterans on this question of exemption, but if there are 680,000 veterans in the State of New Jersey and we did give them an exemption of \$2,500, we would be losing \$1,600,000,000 in revenue."

Well, the statement is absurd. It doesn't figure to that proportion at all. But it should give the state authority an income—I mean that

the State shouldn't regulate this game of chance without a return. The government of our great nation extracts certain monies whenever there are certain veterans' functions, and I say the State of New Jersey, through its authority, should also be in a position to extract certain monies from the profits and use that in helping to reduce the tax burden.

We are very much mindful of the financial condition of this State and we are interested in it, and we certainly don't want to see it in the hands of any receiver. But if there is a chance to obtain certain money legally, we should do so now. We have an opportunity and I think that this Committee should definitely permit the voters, as they did in the race track problem, to vote on the question as to whether or not they do want a game of chance.

Now, let us see the amount of money that has been spent. Reading in the paper I notice that many of our leading lawmakers are seen at the race track, and I don't think it's disgraceful if they want to go down there just to see how the horses run, or if they want to put down a bet—and I don't think it's immoral. But if you see these same lawmakers in a gathering of men behind closed doors and they know it's illegal, well then, we are dealing with a serious proposition and I don't think that we should place our representatives or our people in that situation.

We are definitely 100 per cent for this proposition. We ask this Committee to go definitely on record before the delegates at the Convention in session and make this proposition known, and to give the people the right to play if they wish for their diversion. I say they should have that opportunity and be given the chance to go along.

Now, I think it would be up to the legislative representatives to determine if a commission is to be appointed to take over this question, and then to leave it to the commissioner and his able representatives to determine the bona fideness of an organization and just what the question of that game of chance may be. If you see fit to enumerate the various games of chance for the people to vote on at referendum, it would be your privilege to do so.

I was mandated to come here on behalf of the State Department of Veterans of Foreign Wars to tell you exactly what they want. They want it, and I know that under the circumstances they are entitled to do as they see fit and they want it legalized. I say that of the boys and girls who served their country, if there are 680,000 in this State, I would say the majority are for it. They are entitled to that relaxation and enjoyment. They served well, did a good job, and they certainly kept the pressure group over there from coming here; and if they didn't do the job in all wars we would not be sitting here today.

Thank you very much.

CHAIRMAN: Are there any questions?

(Silence)

CHAIRMAN: Thank you very much. . . Mr. Arthur W. Cranston.

MR. ARTHUR W. CRANSTON: Mr. Chairman, and members of the Legislative Committee:

I represent the Loyal Order of Moose which consists of 44 lodges and 25 chapters of the Women of the Moose, a national organization having over one million members. I come before you, being delegated at a state meeting held on the 20th day of July in Pleasantville, New Jersey.

We of the Moose in New Jersey feel a little ashamed of ourselves because we are unable to participate in charitable enterprises as do lodges in the other states in the Union. For instance, the State of Pennsylvania during the war contributed three B-24 bombers to the U. S. Government, and in many other parts of the country they have contributed ambulances to the Red Cross, iron lungs, and so forth. We at Moosehart, Illinois, take care, at the present time, of 1,322 children, together with some 114 mothers. At Moose Haven, Florida, at the present time we take care of 284 aged members of our order, together with their wives if they are alive.

I'm thoroughly in accord, and the Moose is thoroughly in accord, with the expressions of Mr. Handler who represented the Elks, and Mr. Stanton who represented the Eagles, and if I were to stand here and relate in detail everything that they related, I'd be taking up your valuable time. All we ask you to do is to give the people of the State of New Jersey the privilege of deciding whether or not they are desirous of liberalizing gambling in the manner prescribed. We know that members of the clergy have stated here that they could not instruct, and we have no idea of instructing, anybody how to vote for or against, and I don't think anyone should be instructed. I think the people are capable of voting according to their conscience and they should be given that privilege. I thank you for the privilege of speaking here.

CHAIRMAN: Thank you, Mr. Cranston. Are there any questions? . . . A. Marcus Tisch.

MR. A. MARCUS TISCH: Mr. Chairman, and ladies and gentlemen of the Committee:

I am here to represent the Disabled American Veterans Department of New Jersey. This afternoon I received a request from our chairman, John W. Bell, who couldn't be present, and as a member of the Legislative Committee he requested that I be here, voicing the resolution which was passed several weeks ago at our state convention in Asbury Park in favor of bingo. I don't like to take too

much of your time. I will only say that we favor a great many statements that the representatives of the Veterans of Foreign Wars have made. Thank you.

CHAIRMAN: Any questions? . . . Thank you, Mr. Tisch.

Reverend Alex Shore.

REVEREND ALEX SHORE: Mr. Chairman, and members of the Committee:

I represent the New Brunswick Council of Churches, an organization of 29 local churches in this community. I am not going to take up your time with a long discussion except to say that we concur with the position presented by Dr. Green for the State Council of Churches of New Jersey and wish to put ourselves on record as such.

CHAIRMAN: Thank you, Doctor. . . Reverend Page M. Beverly.

REVEREND PAGE M. BEVERLY: Mr. Chairman, and ladies and gentlemen:

I represent the Baptists of North Jersey, more than 312 churches. They have expressed themselves against gambling going into the Constitution at all. They want it to be made a legislative function and they offer some reasons for it. One is that if you put it in the Constitution, you give the floating gamblers an opportunity; you make New Jersey a mecca for gamblers everywhere. When I say gambler I don't mean the little fellow, but the gambling bosses. They'll come in here and set up gambling and they'll exploit the poor people who are the most exploitable. There will be a great increase in other crimes as an outcome of gambling—murder for instance. There have been many men killed. Some of you may have traveled in Kansas City, where they have a record for murders. Most of these murders in Kansas City result from cheap gambling. There have been more men killed over 25 cents in gambling than are killed for large stakes. They don't get to the big men because they bet at windows, but every evening the ambulance is running, taking men to the hospital to die.

Now, in reading this pamphlet on your Alternatives to be submitted to the voters, it says "games of chance." That expression is too ambiguous. I notice that several men got up here, talking about bingo. The book doesn't say bingo; it says "games of chance." Well, now, that is a very wide variation. If you go into the county of the Senator who proposed this change you find bingo is quite desirable. I'm in Essex and you shoot crap in Essex. I don't see a thing about crap in there, but that same thing will give you a chance to shoot crap. I don't see why they couldn't say they would have a crap game for charity, for poor widows and poor orphans. That phrase is very misleading.

I question these men who represent these organizations. I ques-

tion them because I've joined most of them, except the Eagles. Of course, I couldn't get in there. They wouldn't take my application. I was in the Moose until they broke up my Moose lodge. We had a Moose lodge in Newark until the order came from Moosehart, Illinois, that these people cannot exist and they revoked my charter. I was in that. I knew something about that.

My connection with the veterans is very wide. You talk about interest in veterans. Why, I claim to have more interest than any other man in here, even my friend Mr. Becker, because I had enough interest to serve throughout this war in this chaplaincy and not demand a salary, and I don't think there is another man here that's done that same thing. I served three years and six months as such, and have been cited by the Secretary of War as having so served. Now, I have some interest in veterans but I don't get wild over them. I don't believe in too many veterans' clubs springing up. I think that all veterans should join some reputable organization—join the American Legion or the Veterans of Foreign Wars, or some other real organization.

I've had men come to me in little groups of five and seven to set up veterans' clubs for the purpose of making money, and they want privileges to do everything to make some money for themselves. I don't mean money for charity. Money to put in their pockets. I'm a veteran myself. I'm not going to tell you how long because you'll think I'm old. But I served long with the Army, and you go talking about veterans.

Then again, I question where the money goes. I want some of you men connected with veterans' organizations to watch the things sold on the street and go back and watch where the money goes and see how much good you're going to do for charity with that. You're talking about the hospitals. I go to hospitals. I'm on a hospital tour right now, and I go to Lyons and all these places. I wish you could know how much gets there at Lyons. I think less gets there than the money that went into the Treasury of Massachusetts. I'm confident of that. These fellows that serve on committees know how expenses eat up the money you raise.

When you come to gambling for charity, there is no such animal as that. Gambling to help charity is ridiculous. Gambling only helps a man to promote gambling. It doesn't help the man who gambles. The man who gambles is a loser and the promoter is a winner. I don't care what form of gambling it is. Gambling never helped any man who plays it.

Now, you give this to the people of New Jersey, a State that is a decent State, and you're going to tie the hands of your police officer. A policeman is no good who can't arrest a man for anything he does. Take away all power of arrest of a policeman, and all the

power of conviction by jurists, and all the power of Senators and judges, and you have a lawless State. That's what you're going to do if you put this thing in the Constitution. Every racketeer from somewhere can come into this State and stand on his constitutional rights. The police won't be able to go into his joint and there's going to be murder, kidnapping and everything else under the name of charity.

I wish you would give this thing to the Legislature. I'm speaking on behalf of all these Baptists and Methodists and urge that you give this to the Legislature and let them govern the State. Let them pass laws to regulate our conduct. Let them decide who shall go and who shall come, and put the fundamental things in our Constitution.

I respect these fellows who spoke here. You've had two eminent lawyers here today who know the people. We had a depression from 1931 on. Some of these men were members of the party that controlled the dole. I remember the depression around Newark. I remember the relief. If you put on gambling on a large scale you're going to increase your relief burden and you'll have to pay more taxes, because a man who gets a week's wages will never get home with them. He stops by these private gambling joints which are conducted in the name of charity, and he gets home with nothing for his wife and children. The taxpayers of New Jersey will have to take care of these families when the husbands ought to take care of them.

I'm hoping in the name of honesty and decency that you will take this thing and throw it in the waste basket and let the Legislature make the laws to govern this State.

CHAIRMAN: Thank you very much, Reverend Beverly. . . Are there any questions? . . .

Mr. Russell D. Custer.

MR. RUSSELL D. CUSTER: I have no statement to make.

CHAIRMAN: Reverend Jesse L. Lee is registered. I don't know whether he desires to speak or not.

REVEREND JESSE L. LEE: No, I do not.

CHAIRMAN: Mr. Quackenbush is also registered, but I don't know whether he desires to speak or not.

(Silence) •

Dr. Hill is also registered. Does Dr. Hill desire to speak?

DR. HILL: No.

CHAIRMAN: Also, Reverend John E. Barkley.

(Silence)

CHAIRMAN: Mr. Theodore Widemere.

MR. THEODORE WIDEMERE: I arrived late and I don't

know whether this session is supposed to be entirely on gambling or not. I don't wish to speak on that at all.

CHAIRMAN: No, it isn't. You may have gotten that impression from sitting here this afternoon, but this session is to consider the entire Legislative Article.

MR. WIDEMERE: My plea will be a brief one. I am appearing here on behalf of the township committee which has requested me to make a plea to you that some machinery be set up in the Constitution, if that be the proper place for it, for the repeal by municipalities of any matter which—by referendum, that is—of any matter which has previously been adopted by referendum. As the matter now stands, in many cases, in practically all cases I believe, when a given proposition is once adopted by a municipality, the municipality is thereupon foreclosed from any further action in the matter. As time lapses, possibly the matter that has been adopted is proven to be a good one. On the other hand, with conditions changing and being in a state of fluidity, the matter previously adopted may not fulfill the purpose for which it was adopted. I therefore again repeat what I said before—that this Committee, if the Constitution be the proper place, should give the matter due consideration.

CHAIRMAN: Isn't your thought directed to a situation where the referendum is one under a constitutional provision? In other words, if the referendum is merely a legislative referendum, or a referendum set up by legislative act, don't you think the Legislature without regard to any constitutional provision would have the right to provide that the people might change their minds by a subsequent referendum?

MR. WIDEMERE: If they have that power. I merely mention this as a case in point. I know that there is a definite ruling by the Supreme Court of this State, we'll say for instance, in the matter of civil service. I'm not bringing that up as an objection to civil service.

CHAIRMAN: Yes, I understand.

MR. WIDEMERE: But the court has decided that when the proposition is once adopted, that finishes it. You cannot bring it up again.

CHAIRMAN: Thank you. I think I understand your position, Mr. Widemere.

MR. WIDEMERE: Thank you very much.

CHAIRMAN: Mr. James Smith.

MR. JAMES SMITH: Mr. Chairman, and ladies and gentlemen of the Committee:

My remarks will be directed to the home rule provisions in your tentative draft. Dr. Reed, who appeared earlier this afternoon, certainly indicated that you hadn't gone far enough in your home

rule provisions. I'm glad to note that you invited him to draw up a provision that would be in line with his thinking. I hope to have the pleasure of joining him in that job. We feel—that is the League of Municipalities feels—that you could have gone a little further than you did in your draft.

I am not going to take very much time now, but I would like to read, from the memorandum that we submitted before,¹ the particular paragraphs that we feel that you have not given as much attention to as you might, and that is the provision that said (*reading*):

“The natural right of the people to local self-government not contrary to this constitution or state law shall not be impaired or denied. The provisions of this Constitution and of state law concerning counties, cities, boroughs, towns, townships or villages, herein referred to as counties and municipalities, shall be broadly construed in their favor; the rights and powers of any county or municipality shall include not merely those expressly or incidentally conferred, specifically enumerated, indispensable, essential, or necessarily implied, but also those rights and powers deemed by the governing body of the county or municipality to be reasonably convenient for their execution and those rights and powers not inconsistent with or prohibited by this Constitution or state law.”

In other words, we feel that there should be a provision that would give broader powers and broader implications in the language. It would bring us closer to home rule than we are at the present time. As it is now, the Legislature does have control, and the court systems have construed rather strictly legislation pertaining to municipal government. We feel the time has arrived when the dignity of local government should be established and should be recognized, and that in this day and age we must have more faith and trust in the people back home.

After all, our government is essentially to be found locally, in our municipalities. Our government in this country will never reach any higher level than that which we have in our local communities, which are closest to the people. We feel that if you were to give a little more serious consideration to that clause in our recommendation—we do not say that you should use the language specifically, but some of the language—it would at least help to bring about a broader interpretation of local self-government.

CHAIRMAN: May I have a copy of that statement, please, Mr. Smith? Are there any questions?

MR. LANCE: On page 13, paragraph 11, have you had an opportunity to examine that yet?²

MR. SMITH: We feel that maybe it could have gone further, but we are glad to have the Committee draft such a clause.

¹The letter memorandum of the New Jersey State League of Municipalities appears in the Appendix to these Committee Proceedings.

²The reference is to Section VII, paragraph 11 of the Tentative Draft of the Legislative Article, dealing with mandatory laws.

MR. LANCE: Do you know what a voting machine costs offhand, Mr. Smith?

MR. SMITH: No, I do not.

MR. LANCE: Somebody told me \$1,200. I wouldn't know. Do you think every municipality in this State, even the small ones, should have voting machines?

MR. SMITH: Well, they should have at least the right to determine for themselves whether they should have voting machines. That's what we're asking for—that they decide for themselves.

MR. LANCE: If paragraph 11 were in our Constitution and the Legislature put voting machines in some of the municipalities and not all, paragraph 11 would make the State foot the bills. Is that correct?

MR. SMITH: It may be correct from the interpretation here, yes.

MR. LANCE: Would you favor that?

MR. SMITH: I certainly wouldn't have any objection as long as there is no mandate to the municipalities to spend money that they are not prepared or willing to spend.

MR. LANCE: Do you believe that counties should be classified into six classes as we now have them?

MR. SMITH: I haven't given a thought to the classification of counties, but as far as mandatory spending by counties, which the municipalities must in turn collect and pay for the county, I think the same principle applies.

MR. LANCE: Don't you think that paragraph 11 would abolish our classification of counties into six classes, for all practical purposes?

MR. SMITH: Frankly, I haven't given that clause enough consideration to say that I know that answer.

MR. LANCE: Do you believe that the State should demand certain minimum levels from its municipalities, as to safety, education, certain social services, etc.?

MR. SMITH: We have no objection to the State having the control and regulation of certain things that are necessary for the people of the State generally. As was stressed here before, we do not imply that by local self-government we should remove those regulations, for instance, that go into the municipality by way of local government regulations—the Budget Act, the Bond Act, etc. We want those to remain.

MR. LANCE: Do you think that it is wrong for the State to fix the minimum salaries of sheriffs, county clerks, freeholders, in the various counties?

MR. SMITH: I think that the State should not determine salaries in any division of government other than the State. You speak of counties. If the State should mandate the salary of officials

in counties, they are mandating the municipalities to pay those salaries because they are the people who collect and pay the taxes to support the counties.

MR. LANCE: What would you do where a Democratic sheriff was elected and a Republican board of freeholders had control? Do you have any suggestion as to how that sheriff could be assured a living wage?

MR. SMITH: That goes back to the question of whether you trust the people to elect the proper officials to run the government, whether it be on the municipal or county level. You have to assume that you have to trust people, otherwise you couldn't even trust the legislators to do the things that they do. You've got to start from that premise. You can't single out any one specific example, such as you've mentioned.

CHAIRMAN: As a matter of fact, the practice has been in recent years, has it not, Mr. Smith, for the legislators to fix maximum salaries for local officers and officials, rather than minimum salaries?

MR. SMITH: That's true. Yes, maximum and minimum.

CHAIRMAN: Any further questions? . . . Thank you very much, Mr. Smith.

I have three other names registered. I do not think they indicated that they desire to speak, but I'll call them to make certain: Reverend Milton B. Eastwood . . . Reverend Moss . . . Reverend Clarence Blackmay. . . .

(No response was made to any name)

CHAIRMAN: Does anyone else wish to address the Committee?

(Silence)

CHAIRMAN: This hearing will be adjourned.

(Hearing adjourned at 5:35 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Tuesday, July 29, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held immediately following the meeting of the Constitutional Convention, at 11:30 A.M. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Lewis, Morrissey, Proctor and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Leonard.

On motion made by Senator Morrissey and seconded by Senator Proctor, it was unanimously agreed that the following proposals be submitted to the Committee on the Executive, Militia and Civil Officers for consideration by that Committee for insertion in the Executive Article:

(Suggested provision to be inserted in the Executive Article, Section I, paragraph 13 in substitution for the last sentence.)

"If, on the said tenth day, the Legislature is in adjournment sine die, the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment, but if he shall not sign it within that time, it shall become a law on the forty-fifth day, Sundays excepted, after such adjournment unless he shall return it with his objections, on that day, to the house in which it shall have originated, at a special session of the Legislature which shall meet on that day, without any petition or call, for the sole purpose of the reconsideration, or the amendment and reenactment, of bills in the manner provided in this paragraph. At such special session the bill may be reconsidered in the manner provided in this paragraph for the reconsideration of bills and if approved of by two-thirds of all the members of each house of the Legislature upon reconsideration it shall become a law. The Governor may, in returning a bill with his objections for reconsideration at any general or special session of the Legislature, recommend in his objections thereto that any amendment or amendments specified therein be made in the bill and the bill shall thereupon be before the Legislature and subject to amendment and reenactment and may be amended and reenacted instead of being reconsidered and if amended and reenacted it shall again be presented to the Governor and it shall become a law only if he shall sign it within ten days after presentation to him; but no bill shall be returned by the Governor a second time."

*(Suggested provision to be inserted in
Article — Public Officers and Employees.)*

"The State Auditor shall be elected by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be qualified into office and it shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and

agencies of the State government and to report to the Legislature or to any Committee thereof as shall be required by law, and to perform such other similar duties as shall, from time to time, be required of him by law."

The Committee considered and revised various sections of the Tentative Draft of Legislative Article by Committee on the Legislative, for use in the final draft¹

On motion duly made, seconded and unanimously adopted, the meeting recessed until 2:00 P.M.

* * *

The meeting of the Committee on the Legislative reconvened at 2:00 P. M. All members and Mr. Besore were present, with the exception of Mr. Leonard who was absent.

The Chairman read a letter addressed to the Committee by Arthur T. Vanderbilt, Esq., the contents of which were discussed by the members of the Committee. On motion duly made, seconded and unanimously adopted, it was agreed to submit the following memorandum to the Committee on the Executive for consideration:

"To: Committee on Executive, Militia and Civil Officers
FROM: Committee on the Legislative

The following is an excerpt from a letter addressed by Arthur T. Vanderbilt, Esq., to the Committee on the Legislative. It is the opinion of the Committee on the Legislative that this excerpt contains subject matter which is properly within the province of the Committee on Executive, Militia and Civil Officers:

"While seeking to protect the Governor from the Legislature, the Constitution should at the same time set up suitable machinery for protecting the people from the possibility of executive and administrative mismanagement. Accordingly, instead of providing for a State Auditor to be elected by the Legislature, the Constitution should provide for the election by the Legislature for a long term of years of a Comptroller General who should have the same broad powers of the federal Comptroller General and who would be a real watchdog of the treasury. In addition, he should have all the powers which have heretofore been vested in the State Auditor and the State Comptroller."

On motion made, seconded and unanimously adopted, the meeting recessed until 7:00 P. M.

* * *

The meeting of the Committee on the Legislative reconvened at 7:00 P. M. All members and Mr. Besore were present, with the exception of Mr. Leonard who was absent.

The Committee further considered and revised the various sections of the Tentative Draft of Legislative Article by Committee on the Legislative, for use in the final draft.

Proposal No. 41, previously assigned to the Committee by the Constitutional Convention, was considered by the Committee on the Legislative and on motion duly made, seconded and unanimously carried, the Proposal was rejected.

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

On motion duly made, seconded and unanimously adopted, the meeting adjourned until Wednesday, July 30, 1947, at 2:00 P. M.

COMMITTEE ON THE LEGISLATIVE

Tuesday, July 29, 1947

CONFERENCE NOTES

Consideration of the printed Tentative Draft of Legislative Article, dated July 21, 1947:

Section I, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Approved without change.

Paragraph 4:

Agreed that this paragraph be amended by striking the words "the Senate and of all of the members of the General Assembly" on lines three and four, and substituting the words "each house" therefor. The paragraph then reads:

"4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require."

Section II, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Section III, Paragraph 1:

Approved without change. Consideration was given to a letter received from Hon. Herbert Pascoe, suggesting that the words "and promulgated" be added after the words "have been taken," in the last line of this paragraph, but decision was made that the language be retained in its present form.

Section IV, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Approved without change.

Paragraph 4:

Approved without change.

Paragraph 5:

Approved without change.

Paragraph 6:

Approved without change.

Paragraph 7—1st paragraph:

Approved without change.

Sub-paragraph 1:

It is agreed that this sub-paragraph be amended by striking the word "during" on the fifth line and substituting the word "until" therefor; striking the words "in which the law making provision therefor is passed.", in lines 6 and 7, and adding after the word "year" in line 6 the words "following the next general election for members of the General Assembly." The paragraph will then read as follows:

"The compensation of members of the Legislature shall be fixed at the first session of the Legislature held after this Article of this Constitution takes effect and may be increased or decreased, from time to time thereafter, by law, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly."

Paragraph 8:

It is agreed that this paragraph be amended by striking the words ", felony and breach of the peace," and substituting the words "and high misdemeanor," therefor; by striking the colon in line 5 and substituting a semicolon therefor, and by changing the capital "A" to a small "a" in the word "and" following the semicolon.

Page 8, Section V, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Approved without change.

Paragraph 4:

Approved without change.

Paragraph 5:

Approved without change, except that the Committee is agreed that, in the Schedule, exception be made from the provisions of Section V, paragraph 5, allowing performance by the State of any contract heretofore made or any irrevocable charter.

Section VI, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

Paragraph 3:

Approved without change.

Section VII, paragraph 1:

Approved without change.

Paragraph 2 (Alternative A):

and

Paragraph 2 (Alternative B):

It was agreed by the unanimous vote of the Committee that both of the above paragraphs, Alternative A and Alternative B, be deferred for further consideration.

Paragraph 3:

Approved without change.

Paragraph 4:

Approved without change.

Paragraph 5:

Approved without change.

Paragraph 6:

Approved without change.

Paragraph 7:

Approved without change.

Paragraph 8:

Approved without change.

Paragraph 9—sub-paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13:

Approved without change.

Paragraph 10:

Mr. Besore was authorized to draft a new paragraph 10 for consideration by the Committee.

Paragraph 11:

Mr. Besore was authorized to rewrite the paragraph concerning the law of municipalities, to be known as paragraph 11. This will take the place of the present paragraph 11 which will thereupon become paragraph 12.

Paragraph 12:

It was agreed by a majority vote of the Committee to excise paragraph 12, concerning mandatory legislation.

Section VIII, paragraph 1:

Approved without change.

Paragraph 2:

Approved without change.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Wednesday, July 30, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 2:30 P. M. The following members were present: O'Mara, Chairman; Camp, Cavicchia, Hacker, Jorgensen, Lance, Lewis, Morrissey, Proctor and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Leonard.

The Committee further considered and revised various sections of the Tentative Draft of the Legislative Article by Committee on the Legislative, including Section VII, paragraph 2, Alternative A and Alternative B, and the drafts of Section VII, paragraphs 10 and 11 redrafted by Mr. Besore, for use in the final draft of the Legislative Article, for submission to the Constitution Convention.¹

The Chairman read to the Committee a tentative draft of a Report on the Legislative Article, to be submitted to the Constitutional Convention. The Committee discussed this draft at length and agreed that it be held over for further discussion and preparation in final form at the next meeting of the Committee.

The Committee discussed at length the form of Schedule to be submitted to the Constitutional Convention. On motion made, seconded and carried, the Committee agreed upon the final form and content of Schedule to be submitted by the Committee on the Legislative to the Constitution Convention.

On motion made, seconded and unanimously adopted, the meeting adjourned until Thursday, July 31, 1947, at 2:30 P. M.

COMMITTEE ON THE LEGISLATIVE

Wednesday, July 30, 1947

CONFERENCE NOTES

Further consideration of the printed Tentative Draft of Legislative Article, dated July 21, 1947:

Section VII, paragraph 2

The Committee has decided to recommend to the Convention the

¹ The proceedings appear immediately after these minutes, under the caption "Conference Notes."

submission of alternative clauses on the above paragraph, the first being Alternative A as set forth in the Tentative Draft; the second to be Alternative B as set forth in the Tentative Draft, with the following amendments:

The word "specified" be inserted after the first word "of" on the seventh line; the period after the word "organizations" on the ninth line also to be stricken and the words "and volunteer fire companies." added. A clause to be inserted requiring the Legislature, in any act adopted pursuant to this provision, to submit the proposition to a referendum before it can become effective in any municipality, reserving to the municipality the right to rescind their approval by a subsequent referendum.

The Committee has agreed that it recommend to the Legislature that sufficient funds be provided to permit the continuous revision of the statutes, to the end that all of the statutes shall be generally revised periodically.

Section VII, paragraph 10:

It was agreed by the Committee that the phraseology of the draft of Section VII, paragraph 10, prepared by Mr. Besore, be adopted, except that the word "the" be inserted between the words "by" and "agreement" in line 1; that the words "or the agency in control of the affairs" in lines 6 and 7 be stricken and the word "or" be inserted before the words "of such county," in line 7. In line 12, strike out the word "such" after the word "of" and insert the word "the"; strike out the words "or of such agency," (line 12) after the word "body" and insert the words "of the municipality or county,".

Section VII, new paragraph 11:

It was agreed by the Committee that the phraseology of the draft of Section VII, new paragraph 11 (to take the place of the paragraph 11 in the printed Tentative Draft) prepared by Mr. Besore, be adopted, except that the word "any" be inserted between the words "of" and "law" on the first line; that the word "broadly" be stricken in the third line and the word "liberally" be substituted therefor; that the words "rights and" be stricken in lines 4 and 7; the word "rights" be stricken in line 8 and the word "and" immediately following in line 9.

Schedule:

The Committee considered and drafted the Schedule to be submitted to the Convention.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE LEGISLATIVE

Thursday, July 31, 1947

(Executive Session)

(Minutes)

A meeting of the Committee on the Legislative was held at 2:30 P. M. The following members were present: O'Mara, Chairman; Cavicchia, Hacker, Jorgensen, Lance, Lewis, Morrissey, Proctor and Sanford. (Mr. Charles deF. Besore, committee technician, was also present.)

Absent: Camp and Leonard.

The Committee further discussed at length the form and content of the Report and Proposals on the Legislative Article, to be submitted by the Committee on the Legislative to the Constitutional Convention. The Chairman, Senator O'Mara, and Mr. Besore thereupon prepared the Report and Proposals in final form.

On motion duly made, seconded and unanimously adopted, the Committee approved the Report and the Proposals in their final form, and directed that the Report, Schedule and Proposals be submitted by the Chairman of the Committee on the Legislative to the Constitutional Convention.

On motion duly made, seconded and unanimously adopted, the meeting adjourned until Tuesday, August 5, 1947, immediately following the meeting of the Constitutional Convention scheduled for 10:00 A. M. on that day.¹

¹ There is no record of this meeting.

COMMITTEE
ON THE
LEGISLATIVE
APPENDIX
TO
PROCEEDINGS

REPORT OF THE COMMISSION ON REVISION
OF THE NEW JERSEY CONSTITUTION

(Submitted to the Governor, the Legislature and the People of
New Jersey, May 1942)

(EXCERPTS RELATING TO THE LEGISLATIVE ARTICLE)

SUMMARY AND EXPLANATION

* * * *

ARTICLE III
LEGISLATURE

Summary:

1. The Legislature shall meet in a ninety-day session once every other year.
2. Special sessions shall meet on call for a single, specific purpose and shall last no longer than fifteen days.
3. The terms of Senators shall be four years and Assemblymen two years, with elections in odd-numbered years, in order to remove the influence of presidential and congressional elections.
4. The salaries of members of the Legislature shall be \$1,500 a year.
5. No member of the Legislature shall be eligible for appointment to a State office during the term for which he was elected and for one year thereafter.
6. The Legislature cannot appoint or elect any executive, administrative or judicial officer except the State Treasurer and State Comptroller.
7. The Senate shall act upon all nominations within thirty days and vote in public on all nominations.
8. Lobbying shall be prohibited in legislative chambers, and shall be regulated through a system of compulsory registration.
9. A seven-man legislative council shall be established consisting of the Governor (or, in his absence, the Attorney-General), the President of the Senate, the Speaker of the House, the majority and minority leaders of the Senate, and the majority and minority leaders of the House.
The duties of the legislative council shall be to carry on legislative work between sessions, make studies, prepare legislative programs and act as a contact between the legislative and executive branches of government. The six legislative members of the legislative council shall receive compensation of \$1,500 a year for their services on the council.
10. The right of labor to organize and bargain collectively shall not be impaired.

11. The zoning and condemnation clauses are changed to safeguard public property and permit highway beautification and the building of parkways.

12. Mandatory expenditures are curbed by strengthening the prohibitions against special legislation.

Explanation:

Comparisons with other states disclose that New Jersey has long and complicated legislative sessions, underpaid legislators, rare meetings of legislative committees, and little discussion of legislative problems. One of the basic purposes which the revision is designed to accomplish is to stabilize the legislative process.

The present system, based upon a practice of unlimited sessions of the Legislature, meeting on but one day a week, inadequate compensation for the people's representatives and free rein for all kinds of lobbying, is encouraged by the present constitutional framework. The system results in the breakdown of the best features of the committee system and the necessity for disposing of major legislation through the hazardous proceedings of party caucuses. Legislative exercise of the power of appointment to public office—an essentially executive power—has also contributed to reduce the effectiveness of the Legislature as a law-making body.

The revision of the legislative article attacks all of those weaknesses at their source. While there may be disadvantages to the biennial session in financial planning, they are far outweighed by advantages in legislative effectiveness under New Jersey's special conditions. The constitutions of all States except Rhode Island, New York, South Carolina and New Jersey call for sessions every other year. In South Carolina an amendment to effect biennial sessions is pending. This plan, including the ninety-day limit on the duration of the session, will concentrate legislative attention on important proposals, compel a short businesslike and continuous session, and curtail the mass of unnecessary laws. It will also encourage more men of ability, whose time is limited, to seek seats in the Legislature.

With a Legislature meeting every two years it would, of course, be absurd to elect Assemblymen every year or Senators every three years as at present. Their terms are for this reason increased to two and four years, respectively, which are the usual terms of office for legislators in other States. New Jersey is now the only State in the country that elects Assemblymen for a one-year term.

The compensation of legislators should be more commensurate with time and service rendered. Salaries paid in neighboring states are informative; for example, Massachusetts, \$2,000 a session; New York, \$2,500 a year; Ohio, \$2,000 a year; and Pennsylvania, \$3,000

a session. These figures make the recommended increases for this state most conservative.

A major cause of legislative confusion has been the lack of opportunity for full and careful considerations of legislative matters. Each member of the Legislature is expected to be familiar with criminal laws, state departmental needs, the tax structure and a host of other intricate and involved questions. Meanwhile, most committees in the Legislature meet neither long nor often. To aid in consideration of legislative affairs, many states have set up legislative councils which devote all their time to the study of proposed legislation, with a full-time research staff assisting.

The council as established in the proposed constitution promises guidance, co-ordination and planning for the legislative process. Between biennial sessions, the council would investigate important legislative problems which require technical competence. During the session, its program would form a guide for the most efficient use of legislative time. After each session, the council will follow up important new legislation to check upon its practical results in operation.

Since the Legislature has all powers which are not taken from it by express constitutional provision, true innovations, insofar as the recommendations of the commission are concerned, would consist only of further limitations upon legislative power or the deletion of existing restrictions. The commission, after careful study of the subject of mandatory local expenditures, concluded that this problem cannot practically be solved through constitutional provision without confusing the present system of state and local relationships. The commission has, however, tightened up that part of existing restrictions on special legislation which relates to salaries and other rights of public employees in a manner which will eventually compel uniform treatment of all public employees whose responsibilities and situations are similar.

The inalienable right of the working man and women to organize and bargain collectively is recognized.

Other changes, such as those relating to protection of public property and beautification of highways and the building of parkways, are included so as to remove any possible implication from present provisions in the constitution that such power does not already exist.

TEXT OF PROPOSED REVISED CONSTITUTION

* * *

ARTICLE III LEGISLATIVE

SECTION I

General

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State for two years, and of the county for which he shall be chosen one year next before his election, but no person shall be eligible as a member of either house of the Legislature who shall not be entitled to the right of suffrage.

3. The two houses of the Legislature shall meet separately, in regular sessions, biennially on the second Tuesday in January, and shall adjourn sine die not exceeding ninety calendar days thereafter, except as provided in the executive article of this constitution. The Senate shall, however, remain in continuous session and shall convene from time to time at the call of the President of the Senate or of the Governor for the sole purpose of receiving and acting upon nominations to office made by the Governor.

4. Special sessions of the Legislature shall be called by the Governor upon petition of two-thirds of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require. In either event, the call for a special session shall specify the matter or matters to be considered and no other matter shall be considered at such session. No special session shall exceed fifteen calendar days in duration, except as provided in the executive article of this constitution.

SECTION II

Composition

1. The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties respectively, for a term of four years beginning on the second Tuesday in January next following his election.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially. The first classification for the purposes of this section shall be effectuated as provided in the schedule of this constitution.

3. The General Assembly shall be composed of members from each county elected biennially by the legally qualified voters of the counties, respectively, for a term of two years beginning on the second Tuesday in January next following their election.

4. Members of the General Assembly shall be apportioned among the several counties in proportion, as nearly as may be, to population, as determined by the latest census of the United States, except that each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. An apportionment of members of the General Assembly shall be made by the Legislature at its first session after each Federal census, and shall remain unaltered until the next Federal census shall have been taken.

5. Vacancies in the office of Senator or Assemblyman shall be filled for the remainder of the unexpired term by election at the next general election held not less than sixty days after the occurrence of the vacancy.

SECTION III *Legislative Office*

1. Members of the Senate and General Assembly shall receive annually the sum of one thousand five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except for service on the legislative council and as presiding officer of either house. The President of the Senate and the Speaker of the House of Assembly shall, by virtue of their offices, receive an additional compensation, equal to one-third of their allowance as members.

2. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same. For any speech or debate, in either house, they shall not be questioned in any other place.

3. No member of the Senate or General Assembly shall, during the time for which he or she was elected and for one year thereafter, be eligible to hold any appointive office under the authority of this State, including the offices of State Treasurer and State Comptroller.

4. The seat of any member of the Legislature shall be vacated by his acceptance of any office, position or appointment of profit under the government of this State or of the United States.

5. No person possessed of any office, position or appointment of profit under the government of this State or of the United States and no judge of any court shall be entitled to a seat in the Legislature. Such office, position or employment under the government of this State or any judicial office held under the laws thereof shall be deemed to have been vacated, however, by the acceptance of a seat in either house of the Legislature.

6. Each member of the Legislature shall, before he enters upon

the duties of his office, take and subscribe an oath or affirmation to support the constitution of this State and of the United States and faithfully to discharge the duties of his office according to the best of his ability. Members-elect of the Senate or General Assembly may administer to each other such oath or affirmation.

SECTION IV

Procedure

1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the Legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; 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.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. The Senate shall vote in public on the question of confirmation of any nominations to office made by the Governor.

7. Lobbying in the legislative chambers of either house shall be prohibited. Persons or associations who engage to influence legislative action shall register with the Secretary of State, disclosing the names and interest of those for whom they may act, the compensation received or agreed, the measures which they may be engaged in promoting or opposing and all expenditures made or incurred in connection therewith. All such information shall constitute a public record. The Legislature shall impose suitable penalties for violations of these provisions.

SECTION V

Legislative Council

1. There shall be a legislative council consisting, ex officio, of the Governor or, in his absence, the Attorney-General, the President of the Senate and the Speaker of the House of Assembly, the majority

leaders and the leaders of the ranking minority party, for the time being, of each house of the Legislature. Members of the legislative council except the Governor and Attorney-General, shall receive the sum of one thousand five hundred dollars per annum while they serve as members thereof.

2. The legislative council shall: (a) make or cause to be made sound technical studies of the governmental needs of the State, and shall plan and formulate a program of necessary legislative measures predicated thereon in the form of draft bills for consideration during each session of the Legislature; (b) provide independent research and consultive services in aid of its other powers and duties, within the limits of available appropriations, and co-operate with such other legislative agencies as may be established by law; (c) hold its first meeting at the call of the President of the Senate at such time and place as he shall designate, organize for the transaction of its business, adopt such rules of procedure as it may deem necessary, except as such rules may be established by law, and report at the opening session of each Legislature, and at such times thereafter and with respect to such matters as the council may deem in the public interest; (d) have such other powers and duties, not inconsistent with the foregoing, as may be from time to time prescribed by law.

SECTION VI

Legislation

1. The laws of this State shall begin in the following style, "Be it enacted by the Senate and General Assembly of the State of New Jersey."

2. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

3. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not, however, be given effect to invalidate any law constituting a compilation, consolidation, revision or rearrangement of all or part of the laws heretofore or hereafter enacted upon recommendation of any permanent law revision agency, nor to invalidate any law enacted upon recommendation of the legislative council.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length.

6. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, other than by inserting it in such act, except as otherwise provided in this section.

7. The Legislature may by law, notwithstanding any express or implied limitation of this constitution, incorporate by reference with present and future effect any provision of Federal public law or any Federal administrative rule or regulation relating to the regulation of industry or commerce, or to taxation, or establishing technical standards of any kind.

8. All the statutory law shall be continuously revised by such permanent agency as may be designated by law. The Legislature shall, from time to time upon recommendation of such agency and otherwise, enact revisions of such parts of the statutory law as need appears, to the end that all the law shall be completely revised at least once every ten years.

SECTION VII

Legislative Powers

1. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officers, except the State Treasurer and the State Comptroller.

2. The right of labor to organize and bargain collectively shall not be impaired.

3. No divorce shall be granted by the Legislature.

4. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

5. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government, nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon

now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.

6. The Legislature may enact general laws under which municipalities and counties may limit and restrict to specified districts and regulate therein, land uses, buildings and structures according to their construction, and the nature and extent of their use. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place for the protection and conservation thereof. Such laws shall be deemed to be within the police power of the State and shall be subject to repeal or alteration by the Legislature.

7. Any agency of the State or any political subdivision thereof which is empowered to take or otherwise acquire private property for any public highway, parkway, other public improvement or public place, may acquire the fee or any lesser interest, and may be empowered by law to take or otherwise acquire the benefit of a fee or restrictions or easements upon abutting property to preserve and protect the public highway, parkway, other public improvement or public place.

8. The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate, or use the said fund or any part thereof, for any other purpose, under any pretence whatever. The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years.

9. No general law shall embrace any provision of a private, special or local character. The Legislature shall not pass any private, special or local laws:

- (1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.
- (2) Creating, increasing or decreasing the emoluments, term, tenure or pension rights of public officers or employees.
- (3) Relating to taxation or exemption therefrom.
- (4) Laying out, opening, altering and working roads or highways.

(5) Vacating any road, town plot, street, alley or public grounds.

(6) Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs.

(7) Selecting, drawing, summoning or impaneling grand or petit jurors.

(8) Changing the law of descent.

(9) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(10) Granting to any corporation, association or individual the right to lay down railroad tracks.

(11) Providing for changes of venue in civil or criminal cases.

(12) Providing for the management and support of free public schools.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. No private, special or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. The Legislature, at the next session after the adoption hereof, and from time to time thereafter, shall prescribe the time and mode of giving such notice, the evidence thereof, and how such evidence shall be preserved.

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ARTICLE XI SCHEDULE

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SECTION II *Legislative*

1. The first biennial session of the Legislature under this constitution shall be held in the year one thousand nine hundred and forty-four.

2. Members of the Legislature shall be elected for the term of office provided in this constitution at the election held in one thousand nine hundred and forty-three and at each biennial election thereafter, except as otherwise provided in this schedule.

3. The two classes of Senators required to be elected under the constitution shall be first established as follows:

Seats in the Senate that, had this constitution not been adopted

would have been filled by election in the years one thousand nine hundred and forty-three and one thousand nine hundred and forty-five, respectively, shall remain elective in those years. The terms of the incumbents of those seats in the Senate that would have become elective in the year one thousand nine hundred and forty-four, had this constitution not been adopted, shall be extended for an additional year. Three of the seats thereby made elective in the year one thousand nine hundred and forty-five shall be chosen by the Senate to be filled in that year for a term of two years and thereafter for the four-year term provided by this constitution.

4. The compensation for members of the Legislature provided by this constitution shall be paid from and after the effective date hereof.

PROPOSED REVISED CONSTITUTION OF 1944

(Agreed upon by the 168th Legislature and submitted to the electorate on November 7, 1944, and defeated)

(EXCERPTS RELATING TO THE LEGISLATIVE ARTICLE)

* * *

ARTICLE III
LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be chosen one year next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be chosen one year next before his election; but no person shall be eligible as a member of either house of the Legislature who shall not be entitled to the right of suffrage.

3. The two houses shall meet separately, in regular session, annually on the second Tuesday in January and shall adjourn *sine die* within ninety days thereafter; the two houses shall meet separately, in special session, whenever called by the Governor and shall adjourn *sine die* within fifteen days thereafter; but no limitation on duration of a regular or special session shall prevent the continuance of any such session until six weeks after the date of transmittal of an executive order or its approval, whichever is sooner. The Senate shall meet at other times only at the call of its President or of the Governor to receive or act upon nominations, or at the call of its President to try impeachments. The General Assembly shall meet at other times only at the call of its Speaker to consider impeachments.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require. In either event, the call for a special session shall specify the matter or matters to be considered, and no other matter shall be considered at such session which is not specified in such call or in any other message from the Governor delivered during such session.

5. Legislative Committees, created by joint or concurrent resolution of the Legislature or created by resolution of either house thereof, shall continue with all powers delegated to them, notwithstanding

ing any adjournment of the Legislature, unless restricted by the Legislature or house creating them.

SECTION II

1. The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties, respectively, for a term beginning at noon on the second Tuesday in January next following his election and ending at noon on the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially.

3. The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties, respectively, each for a term beginning at noon on the second Tuesday in January next following his election and ending at noon on the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the General Assembly shall be made by the Legislature at its first session after the next and every subsequent census, and when made, shall remain unaltered until another census shall have been taken; provided that each county shall at all times be entitled to one member; and the whole number of members shall never exceed sixty.

4. Vacancies in the office of Senator or Assemblyman shall be filled by election for the unexpired terms only, as may be provided by law.

SECTION III

1. Members of the Senate and General Assembly shall receive annually the sum of two thousand dollars during the term for which they shall have been elected, and while they hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly shall, by virtue of their offices, receive an additional compensation, equal to one-half of their allowance as members.

2. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: and for any speech or debate, in either house, they shall not be questioned in any other place.

3. No member of the Senate or General Assembly shall, during

the term for which he was or shall have been elected, be nominated, elected, or appointed to any State civil office or position, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. No member of the Senate or General Assembly shall during any regular session of the Legislature, qualify into any State office or position.

4. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office, or position, of profit, his seat shall thereupon be vacant.

5. No member of Congress, no person holding any Federal or State office, or position, of profit and no judge of any court shall be entitled to a seat in the Legislature.

6. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly, as the case may be) according to the best of my ability." And members-elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation.

7. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially, and justly perform all the duties of the office of, to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safekeeping by virtue of my office and make such disposition of the same as may be required by law."

SECTION IV

1. Each house shall direct writs of election for supplying vacancies occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the Legislature, the writs may be issued by the Governor under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all its members, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; 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.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. Members of the Legislature may be appointed, by the Legislature or otherwise, and may serve as members of any commission, committee, or other body whose main purpose is to aid or assist in the performance of quasi-legislative functions or to aid or assist the Legislature in performing its functions; provided, that no compensation shall be paid to any member of the Legislature because of such membership.

7. Lobbying in the legislative chambers of either house shall be prohibited. The Legislature shall impose suitable penalties for violations of this provision.

SECTION V

1. The laws of this State shall begin in the following style, "Be it enacted by the Senate and General Assembly of the State of New Jersey."

2. All bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills.

3. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title. This paragraph, however, shall not be given effect to invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or part of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length.

6. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

7. The statutory law shall be continuously revised by enactment from time to time, of revisions of such parts thereof as need appears and the Legislature shall designate by law a permanent law revision agency to examine all of the statutory law, and to recommend to the Legislature such revisions thereof as are needed, from time to time, to the end that all the statutory law shall be completely revised where needed, upon recommendation of such agency or otherwise, at least once every twenty years.

SECTION VI

1. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative, or judicial officer, except as expressly provided in this Constitution.

2. No divorce shall be granted by the Legislature.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.

5. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures according to their construction, and the nature and extent of their use and the nature and extent of the uses of land. The exercise of such authority shall be deemed to be within the police power of the State and such laws shall be subject to repeal or alteration by the Legislature.

6. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, place, improvement, or use, may be authorized by law to take or

otherwise acquire the fee or any lesser interest, and may be authorized by law to take or otherwise acquire a fee in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, place, improvement, or use; but such taking shall be with just compensation.

7. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public free schools for the instruction of all children in this State between the ages of five and eighteen years. The fund for the support of public free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate, or use the said fund or any part thereof, for any other purpose, under any pretense whatever.

8. No general law shall embrace any provision of a private, special, or local character. The Legislature shall not pass any private, special, or local laws:

- (1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.
- (2) Creating, increasing, or decreasing the emoluments, term, tenure or pension rights of public officers or employees.
- (3) Relating to taxation or exemption therefrom except as expressly provided in this Constitution.
- (4) Laying out, opening, altering, and working roads or highways.
- (5) Vacating any road, town plot, street, alley or public grounds.
- (6) Regulating the internal affairs of municipal corporations, formed for local government, and counties; appointing local offices or commissions to regulate municipal affairs.
- (7) Selecting, drawing, summoning, or impaneling grand or petit jurors.
- (8) Changing the law of descent.
- (9) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.
- (10) Granting to any corporation, association or individual the right to lay down railroad tracks.
- (11) Providing for changes of venue in civil or criminal cases.
- (12) Providing for the management and support of public free schools.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

9. No private, special, or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. Such public notice shall be given at such time and in such mode and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

10. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

SECTION VII

1. The Legislature may provide by law respecting the enrolling, organizing, and arming of the militia, the appointment, terms of service, qualifications, and removal of its officers other than its commander-in-chief, and all other matters relating to the militia.

* * *

ARTICLE XI SCHEDULE

* * *

SECTION II

1. The first session of the Legislature under this Constitution shall meet in regular session on the second Tuesday in January in the year one thousand nine hundred and forty-five.

2. Special sessions of the Legislature may be called by the Governor in the year one thousand nine hundred and forty-five for the enactment of laws necessary to make this Constitution fully effective and such special sessions shall not be subject to the provisions of this Constitution limiting their duration or the subject matter which may be considered thereat.

3. Each member of the General Assembly, elected at the election in the year one thousand nine hundred and forty-four, shall hold office for a term beginning at noon on the second Tuesday in January in the year one thousand nine hundred and forty-five and ending at noon on the second Tuesday in January in the year one thousand nine hundred and forty-seven. Each member of the General Assembly elected thereafter shall hold office for the term provided by this Constitution.

4. Each member of the Senate elected in the years one thousand

nine hundred and forty-two, one thousand nine hundred and forty-three, and one thousand nine hundred and forty-four, shall hold office for the term for which he was elected, except as follows:

The terms of the incumbents of those seats in the Senate that would become elective in the year one thousand nine hundred and forty-five, had this Constitution not been adopted, shall be extended for an additional year, and of such seats, two seats, as chosen by the Senate in the year one thousand nine hundred and forty-five, shall be filled by election in the year one thousand nine hundred and forty-six for a two-year term, and the balance of such seats shall be filled by election in the year one thousand nine hundred and forty-six for a four-year term. Seats in the Senate that would be filled by election in the year one thousand nine hundred and forty-six, had this Constitution not been adopted, shall be filled by election in that year and every fourth year thereafter. The terms of the incumbents of those seats in the Senate that would become elective in the year one thousand nine hundred and forty-seven, had this Constitution not been adopted, shall be extended for an additional year, and such seats, together with the two seats filled for a two-year term by election in one thousand nine hundred and forty-six, shall be filled by election in the year one thousand nine hundred and forty-eight and every fourth year thereafter.

5. The compensation provided by this Constitution for members of the Legislature shall be paid from and after the effective date hereof.

RESOLUTION OF THE ALLIED THEATRE OWNERS OF NEW JERSEY, INC.

At a meeting of the Allied Theatre Owners of New Jersey, Inc. held at the West End Casino, West End, New Jersey, on August 21, 1947, the following resolution was passed and adopted:

WHEREAS, there is in assembly at the present time a Constitutional Convention for the purpose of writing a revision of the present State Constitution and the said revision is to be voted on by the voters of New Jersey at the coming November general election; and

WHEREAS, the Convention has seen fit to consider a change in the present Constitution in respect to such a controversial subject as gambling; and

WHEREAS, in our opinion the mandate of the voters of New Jersey to have a revision of the present Constitution was to simplify the present one and not to complicate it with such a controversial subject; and

WHEREAS, certain pressure groups have seized the opportunity to include gambling in a constitutional revision when it does not properly belong there but is a matter for new legislation; and

WHEREAS, the inclusion of such a controversial subject is very likely to cause the defeat of an otherwise good constitutional revision; and

WHEREAS, in the old Constitution the authors deemed it necessary to safeguard the people of New Jersey by requiring any amendment concerning gambling to pass two successive Legislatures and the be voted upon at a special election; and

WHEREAS, the Assemblymen who must act on such legislation were elected to office annually and must therefore follow the will of the people in such matters; and

WHEREAS, lobbies would be tempted to bring undue pressure upon some one legislative session; and

WHEREAS, the present plans of the Convention would undoubtedly open up our State to wide-open gambling:

(Reprint from the Elizabeth Journal)

. . . AND GAMBLING

Attorney-General Van Riper's advice to the legislative committee of the Constitutional Convention deserves cogitation, particularly when he talks about 'leaving the door open for gambling.' His remarks specifically concern the proposal to permit public approval on 'charity gambling.'

Mr. Van Riper fears 'a future Legislature' might be more lax in its interpretation of 'charity gambling' than our present lawmakers. In such case, the Attorney-General properly points out, 'half the political clubs in the State could become 'charitable' (organizations) . . . and thus could have a license to operate gambling games all year' . . . There is no much room for argument as Mr. Van Riper asks: 'Wouldn't this open the door to a racket?' It certainly would . . .';

AND WHEREAS, the possible benefits that could accrue to worthy organizations would be far less than the damage done by increasing juvenile delinquency, immoral effects on the younger generations, and losses by families which would cause suffering among them; and

WHEREAS, there would be no limit set to cash or other types of prizes and they might easily grow, because of competition among different organizations, to \$2,000 or more, as has happened in several instances in this country outside of New Jersey; and

WHEREAS, the purposes of constitutional revision should be to prevent crime and not add to it; and

WHEREAS, businesses both large and small would be seriously affected by such gambling and the people and especially children would be subjected to improper influences;

NOW, THEREFORE, BE IT RESOLVED, that the Allied Theatre Owners of New Jersey, Inc., a trade association representing the independent theatre owners of New Jersey, respectfully urge the Convention to retain the present State Constitution as it relates to gambling, and inasmuch as the moving picture theatre business is one of those that we feel would be seriously jeopardized by any change in the old Constitution as it relates to gambling.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the independent theatre owners of New Jersey use whatever means at their disposal in the way of screens, radio and press to attain such ends.

208 Ferry Street,
Newark, N. J.

MEMORANDUM OF JAMES W. ARROWSMITH
ON THE
INITIATIVE, REFERENDUM AND RECALL

The following composite pattern or draft of state constitutional provisions embodying the initiative, referendum and the recall has been adopted in a number of the states of the Union, either in whole or in part, by the voting citizenship:

LEGISLATIVE DEPARTMENT. ARTICLE SECTION

The Referendum, Initiative and Recall

The legislative authority of the State shall be vested in a legislative assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the legislative assembly, and also reserve power at their own option to approve or to reject at the polls any act of the legislative assembly.

The first power reserved by the people is the *initiative*, and not more than eight percent of the legal voters shall be required to propose any measure by petition and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon.

The second power is the *referendum*, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety) either by the petition signed by five percent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than 90 days after final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of the bills shall be: "Be it enacted by the people of the State of" This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.

The whole number of votes cast for the members of Assembly at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the

number of legal voters necessary to sign such petitions shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State, and in submitting the same to the people he and all other officers shall be guided by the general laws, unless legislation shall be especially provided therefor.

The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of act from becoming operative.

The initiative and referendum powers reserved to the people by this Constitution are hereby further reserved to the legal voters of every municipality, county, borough and district, as to all local, special and municipal legislation, of every character, in or for their respective municipalities, counties, borough and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. No more than five percent of the legal voters may be required to order the referendum nor more than eight percent of the legal voters, or more than 30,000, to propose any measure by the initiative, in any city or town.

Whenever any legal voter or committee or organization of legal voters of the State or of any political subdivision thereof shall desire to demand the recall and discharge of any elective public officer of the State of such political subdivision, as the case may be, they shall prepare a typewritten charge reciting that such officer, naming him and giving the title of his office, has committed an act or acts of malfeasance or an act or acts of misfeasance while in office, or has violated his oath of office, or has been guilty of any two or more acts specified in the Constitution as grounds for recall, which charge shall state the act or acts complained of in concise language without unnecessary repetition, and shall be signed by the person or persons making the same, giving their postoffice addresses, and be verified under oath that he or they believe the charge or charges to be true.

Every elective public officer in the State of, except judges of courts of record is subject to recall and discharge by the legal voters of the State or of the political subdivision of the State from which he was elected whenever a petition demanding his recall, reciting that such officer has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for

his said office to which he was elected at the preceding election, is filed with the officer for whom a petition for nomination or certificate for nomination, to such office must be filed under the laws of this State.

The Legislature shall pass the necessary laws to carry out the provisions of this article, and to facilitate its operation and without delay; provided, that the authority hereby conferred upon the Legislature shall not be construed to grant to the Legislature any exclusive power of law-making nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be: state officers (judges of record excepted), state senators and representatives, 20 percent; officers of all other political subdivisions, cities, towns, boroughs, townships and precincts (judges of record excepted), 20 percent. In any case, not more than 30,000 petitioners are required.

In case the officer whose recall is demanded be a state officer, the person making the charge shall file the same with the Secretary of State. In case the officer whose recall is demanded be a county officer, the person or persons making the charge shall file the same with the county clerk. In case the office whose recall is demanded be an officer of an incorporated city or town, the persons making the charge shall file same with the clerk of said city or town. In case the officer whose recall is demanded is an officer of any other subdivision of the State, the persons making the charge shall file same with the officer whose duty it is to receive and file petitions for nomination of candidates for the office concerning the incumbent of which the recall is to be demanded.

The officer with whom the charge is filed shall formulate a ballot synopsis of such charge not to exceed 200 words which shall set forth the name of the person charged, the title of his office, and a concise statement of the elements of the charge, and shall notify the persons filing the charge, and thereafter such charge shall be designated on all petitions, ballots and other proceedings in relation thereto by such synopsis.

Every person who shall sign this petition with any other than his true name, or shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall herein make any false statement, shall be fined, or imprisoned or both.

At least 60 days prior to any election at which either an initiative or referendum measure is to be submitted to the people, the Secretary of State shall cause to be printed in pamphlet form a true copy of the serial designation and number, the ballot title, the legislative title, the full text of such measure, including amendment to the Constitution proposed by the Legislature, to be submitted to the

people in the foregoing order, and shall cause all such measures to be printed and bound in a single pamphlet. The pages of said pamphlet shall not be less than 4-1/2 by 7-1/8 inches, including the head, and shall be printed in 8-point Roman-faced type with appropriate headings. The cost of printing and binding such pamphlets shall be paid from the money appropriated for printing for the Secretary of State. A table of contents and a brief alphabetical index of the subjects shall be included.

Not less than 50 days before any election at which initiative or referendum measures are to be submitted to the people, the Secretary of State shall transmit, by mail with postage fully prepaid to every voter in the State whose address he has, or can with reasonable diligence ascertain, one copy of the pamphlet hereinbefore provided for, and shall transmit by the least expensive means, copies of such pamphlets as follows: To each county clerk three copies for each voting precinct in the county; to the libraries of each educational, charitable, penal and reformatory institution of the State three copies; to each state officer and member of a state board and to each county officer two copies; to each judge of the Supreme and Superior Courts two copies; to the State Library five copies; to each county and public library in the State two copies; to each member of the Legislature two copies; and shall reserve for distribution on request such number of copies as he shall deem necessary. It shall be the duty of the county clerks of the several counties to transmit two copies of the pamphlets furnished them to the election officers of the respective precincts, to be kept at the polling places throughout election day for the information of voters.

RECAPITULATION OF STATES ADOPTING DIRECT LEGISLATION

Of the 48 states of the Union in this country, 20 states have adopted in their constitutions one or more principles of direct legislation as embodied the initiative, the referendum and the recall, and applied to statutory enactment. They are as follows:

Washington	Kentucky	California
Oregon	Montana	Colorado
Arkansas	Nebraska	Idaho
Missouri	Maryland	Nevada
Georgia	New Mexico	Arizona
Massachusetts	Michigan	Oklahoma
N. Dakota		S. Dakota

Municipal Adoption

Certain large cities of America have adopted in their charters and used this pro-democratic mode of getting the people's will on specific laws, or ordinances; among them are the following:

Boston	Oklahoma City	Detroit
Denver	Cleveland	San Francisco
Cincinnati	Galveston	St. Paul
Los Angeles	Seattle	Philadelphia (tax)
St. Louis	Olympia	

Many other cities, counties, boroughs and townships throughout the states have utilized this pro-democratic mode known as direct legislation at the ballot-box, which is practically inexpensive.

MEMORANDUM ON "DIRECT LEGISLATION"

A legislative bill was first offered and introduced by the Hon. William Harrigan, an Essex County member of the General Assembly, 1893-1894, containing only the referendum proviso. It was hotly opposed in the lower House by the representative of the County of Morris arguing that it was unconstitutional when applied to the enactment of statutory law, and was by the U. S. Constitution restricted to organic law only. The fact is, at that time the getting of the people's will by referendum was not then utilized, but today it has become a popular method. Therefore, it should become a part of our State Constitution, and enlarges the power of petition which in the federal Bill of Rights is guaranteed to the citizens of the United States.

In the later year 1912 a work entitled *The New Freedom*, the writer of which was later Governor Woodrow Wilson, said this: "Why do you suppose that in all the world where the people are invited to control their own government we should set up such an agitation as that for the Initiative, the Referendum and Recall? . . . I believe that we are on the eve of recovering the most important prerogatives of a free people . . . The *Initiative* is a means of seeing to it that measures that the people want shall be passed,—when Legislatures deny or ignore public opinion. The *Referendum* is a means of seeing to it that the unrepresentative measures which they do not want shall *not* be placed on the statute book. Then we come to the *Recall*, the principle is that of an administrative officer who is corrupt or so unwise as to be doing things that are likely to lead to all sorts of mischief, it will be possible to get rid of that officer before the end of his term."

In the minds of some members of the Legislature, the idea that they were agents of the people who elected them seemed to be a myth. For instance, in 1893-94 when the State Senator from Somerset County was approached for his support in the measure, he repudiated the fact that he was elected as *agent of the people*. He said that he was a ruler and no one's agent, that he was *sent and paid* for passing laws by which the people should be governed. This

seemed to be a general opinion among the legislators of that period, and may be so today. As Woodrow Wilson said, this is why there is need of the initiative, referendum and recall, as New Jersey constitutional amendments embodying direct legislation by the voting citizenship.

In a broadcast over WJZ, May 27, 1946, Henry J. Taylor, the writer and economist, called attention to the fact that the United States was a republic, fashioned by our forefathers after lines imported from the old country, and not a democracy as many assume, but a representative government in which the people have no direct voice in the making of statutory law.

RESOLUTION OF THE
ASSOCIATION OF CHOSEN FREEHOLDERS
OF NEW JERSEY

WHEREAS, in the planning of county highways to provide for future traffic volumes it becomes necessary to widen highway rights-of-way to secure increased traffic capacities; and

WHEREAS, the future rights-of-way widths can best be protected by the establishment of building set-back lines along county highways; and

WHEREAS, under Title 40, chapter 55 of the Revised Statutes, municipalities alone are given the power of planning and zoning and of establishing building lines by ordinance, but only such municipalities may so zone as may have completely planned and zoned within their entire jurisdictions; and

WHEREAS, the power to establish building set-back lines is equally important in protecting county highway widths in those municipalities which do not take appropriate action *because of failure to plan and zone their entire area*; and

WHEREAS, it is essential that the Constitution grant authority to the Legislature to enact laws giving power to counties, which adopt a master plan for a county highway system, of planning and zoning and of establishing building lines on county highways; and

WHEREAS, *it is our understanding that the Legislature, in order that there may be no conflict between any county and any municipality in zoning along county roads, may appropriately limit and restrict the respective powers of counties and municipalities on county roads*;

NOW, THEREFORE, BE IT RESOLVED, by the Association of Chosen Freeholders of New Jersey, that the elected members of the New Jersey Constitutional Convention be petitioned and earnestly urged to include in the final draft of the Constitution the following provision:

“The Legislature may enact general laws under which municipalities and counties may adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.”

AND, BE IT FURTHER RESOLVED, that copies of this resolution be

sent to every member of the New Jersey Constitutional Convention of 1947.

The above resolution was adopted by this Association at its meeting held August 4, 1947, and your favorable consideration is respectfully requested.

Charles R. Stout, *Secretary*

Robert L. Adams, *President*

Andrew T. McIntyre, *Assistant Secretary*

RESOLUTION OF ATLANTIC CITY MINISTERIAL UNION

WHEREAS, The delegates to the Constitutional Convention are now assembled for the purpose of considering the recommendations of its various committees in the preparation of a new Constitution for the State of New Jersey; and

WHEREAS, The Legislative Committee of the Convention has recommended two gambling proposals to be submitted to the electorate of New Jersey; and

WHEREAS, the first gambling proposal, known as Alternate "A," would retain the present constitutional prohibitions against all forms of gambling, except pari-mutuel betting at race tracks; and

WHEREAS, the second gambling proposal, called Alternate "B," would authorize the Legislature to sanction "games of chance" conducted by religious, charitable, veterans' or other fraternal organizations or associations; and

WHEREAS, all the electorate would be allowed to decide *via* the "A" and "B" proposals is, whether the State should continue to have horse race gambling or more legalized gambling by "games of chance" in the disguise of religion and charity; and

WHEREAS, "games of chance" by religious, charitable, veterans' and fraternal organizations would open the door for dice, roulette, lotteries, slot machines, bookmaking, etc., and other forms of syndicated gambling under a false cloak of religion and charity; and

WHEREAS, the Legislative Committee has denied the right of the people to vote against all legalized gambling, by the Committee's failure to submit to the Convention a provision that would permit the electorate to vote against any and all types of gambling; and

WHEREAS, the proposals "A" and "B" give the voter only a chance to sanction race track or so-called charity gambling but deny to the voter an opportunity to express his opposition against both forms of gambling; and

WHEREAS, the purpose of the Legislative Committee's proposals is to give the voters only a choice between the *status quo*—horse racing and no other gambling—or horse racing with other gambling by religious, charitable, fraternal and veterans' organizations; and

WHEREAS, in either case to vote for proposal "A" or proposal "B" means to approve gambling; and

WHEREAS, the purpose of the Legislative Committee's recommendations is to deprive the people of their inalienable right to vote to bar any and all types of gambling; and

WHEREAS, gambling is a moral and economic evil that demoralizes people, wrecks families, reduces the level of economic life and pro-

duces a retrograding public welfare; and

WHEREAS, gambling involves less investment, less risk and greater profits to its purveyors and with more destructive effects upon its victims than any other prey unto man; and

WHEREAS, an increase in gambling appetites of people will lead to new pressures upon the Legislature by gambling syndicates with huge political slush funds to be used for bribery and corruption and its attendant demoralization and breakdown of government; and

WHEREAS, hundreds of thousands of citizens and voters, who desire to vote against any and all types of gambling, are being discriminated against by alternate proposals "A" and "B";

NOW THEREFORE BE IT RESOLVED, that this, our "RESOLUTION OF PROTEST" and "PETITION FOR AN OPPORTUNITY TO VOTE" be sent by the President and Secretary to the Constitutional Convention now assembled *via* its Chairman, the Honorable Robert C. Clothier, and the Chairman of the Legislative Committee, the Honorable Edward O'Mara, and

BE IT FURTHER RESOLVED, that copies hereof be sent to the Honorable Frank Farley, Leon Leonard and George Naame, our Atlantic County Constitutional Convention delegates, for presentation to the entire Convention, and

BE IT FURTHER RESOLVED, that copies hereof be sent to the Governor of the State of New Jersey, Honorable Alfred E. Driscoll, and

BE IT FURTHER RESOLVED, that copies hereof be sent to the press of New Jersey, and

BE IT FURTHER RESOLVED, that we humbly request the Constitutional Convention now assembled to afford an opportunity to the electorate, of New Jersey, to assert their inalienable right to vote against any and all gambling as their conscience dictates.

Duly adopted this sixth day of August 1947 at a meeting assembled in the City of Atlantic City.

LETTER OF SCOTT BAGBY, ESQ.

SCOTT BAGBY
RESEARCH AND REPLANNING CONSULTANT
22 Pleasant Avenue
Montclair, New Jersey

Dear Committee Member:

In the past 20 years our New Jersey urban areas have experienced six major revolutions, which are scarcely known to our citizenry. We have had a major revolution in POPULATION trends, both in total numbers and in age distribution, which indicate that future population growth in the north New Jersey area will be relatively minor. Added to this is a major revolution in TRANSPORTATION, which enables this slowing-down population growth to spread over a wider and wider area, a very uneconomical procedure. We have had major revolutions in WAGE AND COST factors, which means increasingly higher costs as we build outlying schools and sewers before fully utilizing existing services. We have had major revolutions at all levels in TAXATION. These revolutions have directly contributed to the tremendous loss in values which our built-up cities are suffering and will continue to depreciate values at an increasing rate. Two further revolutions, one in FINANCING at previously unheard of low interest rates, and a complete revolution in LEGISLATION, which has led to federal public housing and state urban redevelopment laws, offer major opportunities to counteract the damaging factors.

Less than five years ago there were no plans and no planning boards in New Jersey which took these revolutions into account. In the entire absence of any remedial action your taxes have practically doubled as a result. Our basic Constitution will be with us for many years. Within the next ten years you and every other taxpayer in New Jersey will be aware of those damaging factors and ways and means of counteracting them. There will be a demand for modern planning legislation as the only alternative to \$10 and \$15 tax rates. Enabling clauses in the State Constitution will be a major asset in obtaining needed legislation when more people are aware of the gravity of the problem.

An interesting point was made at the hearing, in a letter read into the record, implying that some of the provisions requested by the Federated Planning Boards smacked of socialism. The need for these provisions is the direct opposite of socialism. City problems do not disappear when they are not taken care of at the local level—they become more and more acute. No county or state has ever attempted to solve municipal problems, which has thrown the responsibility to the federal level, which automatically brings about a strong cen-

tral government. In every other nation in which this has occurred this strong central government has become nationalistic or socialistic. It is only through taking care of local problems at local, county and state levels that we will ever be able to avoid national controls.

The late Senator Dwight Morrow, certainly no Socialist, was one of the leading proponents of planning, and his famous statement that the major cost of running a city is the cost of not planning, is even truer today than it was when he made it. Dr. Sly, in his Princeton reports on several cities, points out that the breakup and depreciation of urban areas can only be solved by modern planning.

The provisions which we have sent to you cover all points in the Federated Planning Boards' provisions. They are broad and brief, properly leaving to the Legislature and the United States Constitution safeguards against any possible abuse. These provisions are essential for procedures which are now in effect in many states, as well as for new measures which will be needed in every urban area. Future planning legislation will be held up many years if there is question as to its constitutionality.

I respectfully urge that you incorporate the provisions we have submitted, as the prosperity of the entire State depends in large measure on the ability of our most populous areas to take care of their own problems.

SCOTT BAGBY, *Town Planner*

July 3, 1947

LETTER OF A. THORNTON BISHOP

(Presented by Delegate Myra C. Hacker)

June 24, 1947

Mr. John R. Burnett, Secretary
N. J. Federation of Official Planning Boards
Room 2800, Raymond-Commerce Building
Newark, N. J.

Dear Mr. Burnett:

I read with regret the change in the suggested section "Planning and Conservation" made by the Federation members at the meeting when the committee's proposals were submitted. The inclusion of the last phrase "and to that end, etc.," specifically stamps the section as socialistic in the extreme, and will cause the Convention delegates to review the whole Federation program with caution. As I understand, they are scrutinizing all suggestions bearing provisions that could bring about a further centralization of power and control over private property.

"Sightliness and physical good order of the State" carries extremely wide implications, and to permit reasonable regulation and control of private property to make this provision effective opens the gate to legislation of the most drastic nature. The administration of any such legislation would be left to a group of men varying with their tenures of office—each group exponents of some school of thought sponsoring the architectural vogue prevailing at the time. Neo-classic or ultra-modern can conceivably alternate with the changing whims of the board or commission empowered to so preserve "natural beauty, historic association, etc."

I fully realize the bearing that the study of aesthetics has on economics, and much of my effort is directed towards crystallizing an approach applicable to changing modes. Until the general public is sufficiently in accord with some particular philosophy of aesthetics, to make possible agreement on a set of principles governing good design, legislation controlling the appearance of buildings and landscaping can prove to be extremely mischievous. When such a period of agreement may be reached in the far distant future, legislation will be needed no more than is required now to govern the exercise of good taste.

I fear the effort to push too far will prove costly for the Federation's program, for were I a delegate to the Convention, I would reject this section of the Federation's proposal.

Very truly yours,

A. THORNTON BISHOP

LETTER OF KIRK BROWN

KIRK BROWN
79 North Mountain Avenue
Montclair, N. J.

Constitutional Convention,
New Brunswick, New Jersey

July 3, 1947

Amendment of Article IV, Section V, paragraph 1

Gentlemen:

Amendment of present Article IV, Section V, paragraph 1 as follows is suggested to meet the judicial criticism that in this State there is no statutory definition of the word "office" as there used.

The lack of such a definition makes the prohibition of this present paragraph ineffective as was proven in the case of a State Senator a few years ago. The enclosed article printed at that time is apropos.

* * * *

Revised Article IV, Section V, paragraph 1:

"No member of the Senate or General Assembly shall during the time for which he was elected and during the concurrent term of the Governor or of a person exercising the duties and privileges thereof, be eligible for nomination or election to any office under the authority of this State. Acceptance of such office by the Legislator shall end his term forthwith. For the purpose of this provision, by the term office is meant any employment or payment therefor."

Respectfully submitted,

KIRK BROWN.

(Reprint from the Montclair Times of August 26, 1943)

CONSTITUTION REVISION URGED TO STRENGTHEN BAN

The present State Constitution provides no means for enforcing its ban on legislators' partaking in another branch of the government or for being paid for such services. Kirk Brown in this, the sixth of a series of articles, cites the case of the Senator who acted as "counsel" for a department and points to the need for revision to make the ban effective and urges a vote for revision at the coming election.

The present State Constitution contains several provisions to secure the undivided interest and attention of legislators to the duties and responsibilities of their office. Thus, a legislator must not accept from the State any other allowance or emolument than his salary, "either directly or indirectly, for any purpose whatsoever" and is forbidden to hold an office exercising the powers of another

branch of the government.

Anyone acting in good faith would know how to observe such restrictions, but they have proven inadequate occasionally to prevent the use of their offices for private gain by some legislators. Nominal employment as counsel is such a common method of dipping into the cash drawer that "legal services" has acquired the standing of an alibi. The recent case of the State Senator who acted as "counsel" for a state agency points very clearly to the necessity for revising the Constitution to make these restrictions more definite and to implement them with penalties. In this case the highest court decided that employment as "counsel" is not an "office" but that the employment conflicted with the plain prohibition of our paramount law as manifested when the Senator voted for the appropriation for the salary of his superior officer and for his own, and that acceptance of pay, although prohibited, carried no penalty. So this Senator who took an oath to support the Constitution escapes condemnation on one count because of a technicality and stands condemned for two others but remains in office because there is no way provided for his removal as a consequence of these acts, although he was false to his oath.

The court said in this State there is no statutory definition of the word "office" nor a self-executing penalty for trespassing on the domain of another branch of the government. Well, the place to put them is in the Constitution. When we are dealing with the kind of gentry whose moral code is what they can get away with, something more has to be done than shake the finger at them. How apt Gouverneur Morris, one of the authors of the Federal Constitution wrote: "But after all what does it signify that men should have written constitution, containing unequivocal provisions and limitations? Legislation will always make power which it wishes to exercise, unless it be so arranged as to contain within itself the sufficient check. The idea of binding (this sort of) legislators by oath is puerile. Having sworn to exercise the powers granted, according to their true intent and meaning, they will avoid the shame, if not the guilt, of perjury, by swearing the true intent and meaning to be, in their comprehension, that which suits their purpose."

How great a field is opened by this lack of "sufficient check" if the Constitution is fully understood by the "boys" in Trenton, the "boys" who have taken an oath to defend the Constitution! In the more than ninety agencies with which the executive branch is overgrown what luscious fields of clover lie before them! What a breeding place for lame ducks! (But the majority of legislators are not would-be lame ducks.) There are enough in both houses to counter the situation if they have the backing of their constituents and the way to back them up is to vote for revision at the coming election.

LETTER OF ROBERT CAREY

August 1, 1947

To the Members of the Committee on the Legislative,
State Convention,
New Brunswick, New Jersey.

Atten. Mr. Edward O'Mara, Chairman

Gentlemen:

You have asked for any comments from any citizen of the State on the subject matter involved in your Tentative Report to the Convention. I assume, therefore, you will not object to one or two suggestions coming from a fellow delegate. I could not attend before your Committee during your open house hearings heretofore, because I have been pretty busy with the work on my own Committee—the Rights Committee. I will be as brief as possible with my suggestions.

I am not in accord with your proposed handling of the gambling problem. I believe one of the most fantastic and incongruous mistakes ever made by the people of this State politically was the adoption of the gambling amendment to the Constitution in 1939. Its form lacks common fairness and honesty. This amendment first tells the people of the State that all gambling is a wild, vicious, and wicked thing, and should be punishable to the full extent of the law's limit, and even prevents the Legislature from ever reducing any of the legislative penalties theretofore established. And then it says in a side whisper, "but just now the State needs money very badly. We know that horse racing is a very profitable venture. We are, therefore, willing to forget our views as to gambling, if we can be assured we can be in the rake-off, in the division of the profits from the operation of the race tracks upon a reasonable basis." The amendment reserves to the Legislature the right to say what is a reasonable basis.

This incongruous, hypocritical amendment classifies all gambling, except the most flagrant one, as immoral, corrupt, and vicious. It says that under the law today any perverted soul in our State who ever plays penny ante, poker, or a man, woman or child who bets on a football game, or a yacht race, or a prize fight, or if on a horse race (except within the very sacred confines of race tracks carefully selected and labeled), or anyone who bets on a college match, or who takes a chance on a rag doll at a church fair, or who buys a quarter chance to help a hospital or help the Boy Scouts or Girl Scouts, or who ever looks at a bingo card, is guilty of a misdemeanor, subject to three-year sentence in State Prison. But the men and women who are today gambling in every race track in

the State to the tune of over \$1,000,000 per day, averaging as bettors at the tracks today over \$50 per individual, are in a holy, consecrated and legal class, provided (the Constitution says) the State gets a reasonable share of the profits, the State having been made a limited partner in the enterprise.

Now, I believe that gambling has no place in the State Constitution, and should never have been put there. It is a matter which is properly regulatable by the Legislature as the occasion requires and in legislative fashion. Gambling is not a specialty calling for constitutional action unless all gambling is to be prohibited. It is the only crime which we really mention at any length in our present Constitution. Even under its 1939 amendment, legislation is required.

I appreciate the possible desire of the State to continue its relations with the race track interests, and I appreciate what would seem to be somewhat of a moral obligation to continue that relationship in a measure, but I also feel very keenly for the great mass of people in the State who want to do a little social betting occasionally, who want to take a chance on a rag doll once in a while, and who are willing to help raise funds for the benefit of charities, and charities need funds these days, and who feel that they are being woefully discriminated against today.

But I personally believe, and very frankly I say this, that we are all silly if we don't appreciate the fact that the gambling instinct in the human race can be more effectually and satisfactorily handled by proper regulation than it can by prohibition. We tried to save the country with a kind of Prohibition not long ago. We almost wrecked the morals of our land. It didn't take the nation long to change that picture.

If we strike all gambling out of the Constitution right now, there are sufficient laws on the statute books to protect the public until any new requisite laws are enacted to meet the situation. There will be nothing to prevent the Legislature, immediately after election, if a new Constitution is adopted with gambling out, adopting satisfactory regulatory laws affecting the whole subject matter. The Legislature can readily meet and satisfy every reasonable public demand on the subject, or any existing moral obligation of the State. They can also find some way to handle for the benefit of the State the tremendous quantity of betting which is now going on in practically every community in our State in defiance of law "outside of the gates of the race tracks." I am in favor of the State getting revenues from all and any kinds of commercial gambling ever permitted.

The great mass of small bettors feels, and honestly feels, that what they are doing has a stronger moral basis than what the State

and races are doing at the tracks. I am not one of those who believe that gambling is a vicious exercise of personal liberty.

I believe the State is obligated, regardless of its financial necessities, which are important, to keep faith for a reasonable time with those who have been induced to make large investments in the race tracks, and have no objection to the Constitution saying so. Enclosed is a constitutional form¹ which would fairly meet the situation. I am absolutely in favor of the Legislator granting the application of hundreds of organizations throughout the State which are pleading for the right to locally engage in harmless and social games of chance, the exercise of which cannot do any real harm to anybody, and the results of which are big, satisfactory returns and help to the charities and other institutions of that character in the State. You can trust the American Legion to run a bingo party in one of its club houses, just as we trusted them on the battlefields in the days which have flown. You can trust the church people of our land not to permit any serious wickedness upon the premises owned, operated and controlled by our religious organizations.

I comment here today simply as a delegate to this Convention, representing the second largest county in the State, and am not here as the representative of any church or civic organization, or of a political party, or any gambling interests anywhere. Let's end the present incongruity of our laws. We certainly solved the liquor problem satisfactorily since the fiasco of Prohibition, and our highly esteemed present Governor, who was head of the state liquor department for years, certainly established the fact that the State can properly regulate such matters; and if gambling is allowed, let the State's interests be protected, just as we protected the State's interest in the liquor business.

Throw your two Alternatives out of the window. The adoption of either of them will simply make confusion in the State and in the law. Throw gambling out of the Constitution, and place it in the Legislature. Don't worry about how the people will vote on the problem. If you are fair with the people, they will be fair to the new Constitution. And some day, perhaps, the Legislature may permit Hudson, Passaic, Middlesex and the other counties to have race tracks all their own.

Respectfully,

ROBERT CAREY

PROPOSAL ON GAMBLING

We believe gambling is not a constitutional subject. It is not *entitled* to a place in the Constitution, unless there should be a

¹ The proposal follows this letter.

prohibition of all gambling. Even then, it would still be a legislative problem.

The State, by constitutional amendment in 1939, made betting at duly licensed race tracks under specific conditions, legal; and provided that all other gambling is unlawful. Race tracks have been established in this State under this amendment, and through legislative sanction are now in operation. The State receives large revenues therefrom.

The operation of these tracks heretofore authorized shall be permitted for three years from the date of the adoption of this Constitution, subject to control by the Legislature as at present.

In all other respects, the whole matter of prohibition, regulation, or operation of any and all kinds of gambling, and gambling rights and privileges, shall be and is hereby made subject to such legislation and legislative control as may be enacted and provided from time to time. No constitutional rights or privileges are hereby granted, except as specifically stated and set forth.

RESOLUTION OF THE BERGEN COUNTY CHAPTER, CATHOLIC WAR VETERANS, INC.

WHEREAS, a Constitutional Convention of delegates, representing the people of New Jersey, is now in session at New Brunswick;

WHEREAS, it is the duty of the delegates to present to the people, for their consideration, a Constitution which will be for the protection, security and happiness of all our people;

WHEREAS, all political power is inherent in the people and they have a right to alter or reform the Constitution whenever the public good may require it;

WHEREAS, the present gambling laws have caused hypocrisy in Government, loss of faith and confidence in public officials, corruption in public office, cynicism with respect to enforcement of all our laws because of the lack of faith in enforcement of gambling prohibitions; and

WHEREAS, gambling in itself is not morally bad when properly, sensibly, and legally controlled; and

WHEREAS, large amounts of tax payments are now being avoided by those who profit from illegal gambling, again increasing disregard of all our laws;

WHEREAS, many religious and charitable institutions have benefited by bingo, raffles, church fairs and other similar forms of innocent games of chance, legally described as gambling and a violation of law and now being prohibited, while bookmaking, dice and other forms of gambling are condoned because, like Prohibition, they are acquiesced in, participated in and impossible of enforcement by the people or their duly constituted officials;

WHEREAS, legalized gambling, such as bingo, church fairs, wheels of chance and raffles inherently are not morally bad and would not only benefit many good causes, but are a source of joy and happiness to many of our people for which purposes governments are formed and exist;

WHEREAS, it is the inherent right of the people to be permitted to vote either for or against any question which is of grave concern to them, such as the legalization of certain types of gambling;

NOW, THEREFORE, BE IT RESOLVED, by the Bergen County Chapter, Catholic War Veterans, Inc., that the delegates to the Constitutional Convention, representing all the people of the State of New Jersey, be petitioned to submit to all the people an amendment to our Constitution legalizing gambling where it is conducted for religious or charitable purposes, or for the raising of revenue to reduce our heavy and burdensome tax rates;

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to each delegate to the Constitutional Convention.

JOSEPH T. CARNEY,
County Commander

WILLIAM G. PUGLIA,
Adjutant

OWEN McCORMICK, O.F.M.,
County Chaplain

RESOLUTION OF THE CONCEPTION POST
No. 1188, CATHOLIC WAR VETERANS

WHEREAS, the Catholic War Veterans is an organization comprised of Catholic men who honorably served in the armed forces of the United States during World Wars I and II;

WHEREAS, it becomes occasionally necessary for the individual posts of Catholic War Veterans to sponsor carnivals, bazaars and other social functions in order to realize revenue destined for charitable purposes;

WHEREAS, the State of New Jersey by an amendment to its Constitution has legalized horse racing and wagering at its three race tracks;

WHEREAS, gambling is not inherently immoral;

NOW, THEREFORE, BE IT RESOLVED, by Conception Post No. 1188, Catholic War Veterans, that the New Jersey State gambling laws be amended at the forthcoming Constitutional Convention so as to permit gambling for charitable or eleemosynary purposes, provided such gambling is conducted under the sponsorship and supervision of only recognized, responsible organizations, such as churches, established veterans groups and charitable institutions; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to Governor Driscoll, to each delegate to the Constitutional Convention, and to Mayor Frank Hague of Jersey City.

FRANCIS X. FAHY,
Commander

Dated: June 2, 1947.

LETTER OF THE
NEW JERSEY STATE DEPARTMENT OF
CATHOLIC WAR VETERANS, INC.

CATHOLIC WAR VETERANS
New Jersey State Department

Chairman
New Jersey State Constitutional Convention
New Brunswick, N. J.

WHEREAS, on Tuesday, June 3rd, the citizens of the State of New Jersey voted decisively that a Convention be held to revise the Constitution of the State of New Jersey;

1. WHEREAS, the State of New Jersey by an amendment to its Constitution has legalized pari-mutuel betting on horse racing within the State;

2. WHEREAS, gambling itself, if not indulged in to excess, if there be no element of fraud, and if the persons who spend their time thereat engage in it as a pastime, is not intrinsically evil and no legislation can make it wrong;

3. WHEREAS, persons of normal intelligence, who appreciate that the social affairs at which stakes are occasionally presented are merely for a pastime or to furnish a pleasant occasion to make contributions to worthy causes, do not commit a moral wrong;

4. WHEREAS, unfortunately, the manner in which most of the basic laws in our State were framed goes back to views prevailing in the original Colonies which considered all gaming as intrinsically evil;

5. WHEREAS, the solution to this problem would be best achieved by a wise restatement of laws bearing upon the subject in the light of sound reason and a proper conception of law itself, which has been aptly defined as an ordinance of reason enacted and promulgated by those who have authority in the community for the common good;

6. WHEREAS, many fraternal, civic, patriotic and religious organizations have been conducting carnivals, bazaars and other fund-raising functions in order to raise revenue to carry on their charitable work;

7. WHEREAS, we believe that the delegates to a Constitutional Convention should approach this matter, not emotionally, but by a process of adequate study; and

WHEREAS, the prevailing laws, if strictly enforced, would prevent the members of a family from having a game in their own home;

NOW, THEREFORE, BE IT RESOLVED that we, the New Jersey State Department of Catholic War Veterans, Inc., appeal to the duly

elected delegates to the Constitutional Convention meeting in New Brunswick that consideration be given to permit gambling for charitable purposes, provided such gambling is conducted under the supervision and sponsorship of recognized responsible organizations such as churches, veterans' groups, service clubs and charitable institutions; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Honorable Alfred Driscoll, Governor of the State of New Jersey, and to the Chairman of the New Jersey State Constitutional Convention meeting in New Brunswick.

Respectfully submitted,

ANTHONY M. BARTLETTA,
Commander

VINCENT CATALANO,
Adjutant

LETTER OF THE SGT. JOSEPH J. SADOWSKI,
C. M. H., POST NO. 492, CATHOLIC
WAR VETERANS, INC.

CATHOLIC WAR VETERANS, INC.
Sgt. Joseph J. Sadowski, C.M.H., Post No. 492
St. Stephen's R. C. Church
500 State Street, Perth Amboy, N. J.

June 30, 1947

Honorable Edward J. O'Mara
Chairman Constitutional Legislative Committee
Constitutional Convention
New Brunswick, New Jersey

Dear Sir:

It has come to our attention that you are the Chairman of the Legislative Committee which Committee will consider the question of legalizing "bingo" in the very near future.

This letter is addressed to you, so that you will be informed of our organization's viewpoint on this all-important question.

We feel that the clause pertaining to gambling should be omitted from the Constitution so that our Legislature may be able to legislate on the matter.

Our alternate suggestion would be the inclusion of a clause which would permit bingo and such other forms of gambling where the proceeds of such affairs were being used for church and charitable purposes.

Thanking you for your kind consideration and wishing you and your fellow delegates good health throughout the Convention.

EDWARD S. VITALE, *Adjutant*
JULIUS W. BONK, *Commander*

LETTER OF THE ESSEX COUNTY COUNCIL OF CHURCHES

ESSEX COUNTY COUNCIL OF CHURCHES
850 Broad Street, Newark 2, New Jersey
Harold A. Crane, General Secretary

July 3, 1947.

The Board of Directors of the Essex County Council of Churches, meeting in special session on July 3, 1947, in Newark, N. J., considered the need for the improvement of the legislative processes of the State Senate and House of Assembly, and approved the following resolution and proposal pertaining to the new State Constitution:

“WHEREAS, truly democratic procedure is violated and thwarted when the chairman, or a majority of a committee, can hold any proposed bill in committee, refusing to report it out for the consideration and vote of the Senate or House; and

WHEREAS, we wish our historic State to take the lead in securing for our people the most democratic and enlightened legislative process, guaranteeing full hearing, consideration, and vote to even a small minority; therefore, be it hereby

RESOLVED, that the following be agreed upon as part of the proposed new State Constitution:

All bills or joint resolutions shall be referred to an appropriate committee or committees for study and report, and must be reported out, with any unanimous, majority, or minority recommendations desired, for debate if requested, and for adoption or rejection by vote of the houses or joint session.”

REV. FRED E. MILES,
President
GRACE M. FREEMAN,
Secretary

THE HISTORICAL INFIRMITIES IN OUR STATE CONSTITUTION

A disclosure of the historical facts which have led to
lax government in New Jersey with recommendations
for improvement

By JOHN F. EVANS

Formerly City Counsel of Paterson

GEORGE J. MILLER

Registrar East New Jersey Proprietors

F O R E W O R D

The Convention to draft and adopt a new Constitution for the State of New Jersey is now in session. The delegates are expected to produce a document which will solve the many imperfections of our system of government, but they may be handicapped by the lack of material on so extensive a subject.

The government of New Jersey and of its towns, cities and counties has a long history of development and is today a very complex structure indeed. It is unfortunate that so little "spade-work" has been done preparatory to the Convention.

The authors have written this article, however, in the hope that it may be of some help to the delegates in their task of attempting to provide the people of New Jersey with better government.

To the success of the Convention this little article is respectfully dedicated.

I N T R O D U C T I O N

The base of the governmental structure of our State is the local government of its more than 500 municipalities and 21 counties.

This local government consists of the councils, counties, boards, commissions and executive officers of all the municipalities and counties. It also includes the thousands of local public officers and employees such as teachers, librarians, judges, policemen, firemen, park and recreation employees, street cleaners, sewer maintenance men, road crews, engineers, health inspectors, tax assessors and collectors and many others.

The State Government is the superstructure. It consists of the Governor, State Legislature, which generally meets for a few weeks the early part of each year, and of the state judges. It also includes the state department heads and the hundreds of employees in the departments which supervise the banks, insurance companies, municipalities, motor vehicles, factories and tenement houses, the sale of liquor and race tracks, and also in the administrative departments

having to do with state roads, unemployment compensation and state taxes. In many fields, local government exercises concurrent jurisdiction with State Government and is able to enforce, even in the absence of state officials, the requirements of state law.

Local government is more important than State Government because it is closer to the people and provides them in their everyday lives with all the essential government services. State Government could suspend operations for indefinite periods without too serious consequences, but the suspension of local government, even for a short time, would quickly bring anarchy and disaster.

In the past, the framers of the State Constitution have concerned themselves mostly with the top layer and have overlooked the basic and vital character of the supporting sub-structure of local government. This neglect has led to many mischievous consequences which will subsequently be described.

The foundation of the state and local government of New Jersey is the people. The people in a very real sense are a part of the government, for they not only elect the principal officers, but also exercise a tremendous and controlling influence on its operations by that intangible force known as "public opinion." If the public does not take an interest in public affairs or if through lack of knowledge it comes to unsound conclusions, then the very foundation of government crumbles and democracy itself is in danger.

The public, however, through no fault of its own, is greatly handicapped in properly discharging its functions of government. Too many laws confuse the public. Government is so complex that few, including public officers, understand it. This condition prevents the formation of an intelligent public opinion and leads to poor government.

Our ancestors understood and participated in government much more than we do. They, however, were not confronted by the mystery that baffles us today.

The only proposal made so far to meet this problem is that Assemblies meet every two years instead of annually. Such a provision in the new Constitution would not correct the evil, for it would be merely treating a symptom and not the disease.

The subject of government could be greatly simplified. To do so it is necessary to retrace our steps over the past 150 years and to learn the causes for the decline of our system. Until we know the causes, we cannot supply the remedy. The Legislature does not pass four or five hundred new laws every session merely because it desires to do so. It cannot help itself. It is caught in a vicious historical spiral from which it cannot extricate itself. The law of government can be reduced to general principles easy to comprehend. When that is done, government will not be a superficial

subject in our schools and colleges but will be studied in detail in order to bring about practical results. The University of North Carolina has shown how this can be done. The press and radio will follow suit and tear away the evil which at present enshrouds the subject. The people will be informed. Public opinion will be well-directed and we shall have set the standards of good government in New Jersey which will be a model for every other state in the union. We can prove that democracy will work.

First, however, the shackles and traditions of the past which presently "strait-jacket" the Legislature must be discarded. We proceed to explain how the Convention can begin this great program.

THE HISTORICAL INFIRMITIES IN OUR STATE CONSTITUTION

ORIGINS OF STATE AND LOCAL GOVERNMENT

The present government of the State stems back to the Middle Ages. Contrary to the suggestion of Ligon and Blackstone, the government of the American colony was not based on the English central government. To no such high origins does the American colony owe either its provincial or state government. In the beginning, it was a copy of the government of the English trading companies which in turn was taken from that of the trade guild. By the time New Jersey was settled, the American colony had also taken on governmental aspects of the English corporate borough or city and also of the English county.

The government of the towns and counties in the American colony was, however, copied directly from one or another of the English forms of local government. The English brought their usages and customs in local governmental affairs to America and applied them to their settlements here.

While difficult to comprehend now, the government of England in colonial days was based on the court. The king, his court and all of its subdivisions ruled the kingdom. The earl or alderman, the sheriff and finally the *custos rotulorum* and their respective county courts successively ruled the county. The lord and his court ruled the manor. The mayor and his court ruled the city or borough (words having the same meaning in England); a warden or overseer and his court ruled the trade guild; and the governor and his court ruled the trading companies. That was at a time before the modern American doctrine of separation of governmental powers into executive, legislative and judicial departments—a theory of government never however wholly applied to New Jersey despite a provision in the present Constitution to that effect—was adopted. The word

“court” therefore had a much broader meaning in colonial days than at present. It had broad general governmental powers of all kinds. These general courts for the most part consisted of an assembly of the people having an interest in the matters dealt with by the court. For example, the assembly of the settlers at Elizabeth Town in 1666 all met together in a “town court” or meeting and arranged for the laying out of the town, the division of the land into lots and apportionment of those lots among the settlers. Only those who had an interest in the land were privileged to attend and take part in the proceedings of this town court or meeting. This was in accordance with regular local governmental practice of the manor court in England.

THE ENGLISH COUNTY

The English county or shire was an ancient governmental division dating back to Anglo-Saxon times. Its head or governor in 1665 was, as stated previously, the *custos rotulorum* (or keeper of the records) appointed by the king. He was usually a peer or great landowner. He presided over the county court of general sessions and was also lord lieutenant in command of militia. His deputy was the clerk of the peace, who later became the county clerk, and this deputy usually served for life. The governing body of the county consisted of the justices of the peace from the various parts of the county who met as a court called the general sessions or quarterly sessions. The court sessions were attended by the local officers of the towns such as the constables, the overseers of the poor and surveyors of the highway and also by the freeholders or owners of land who came to serve as grand jurymen or members of the petit jury.

This court governed the county, assisted by the juries. Included in its functions were the building and maintenance of bridges, court houses and jails, the supervision of the work of the local town and county officers, the fixing of wages and prices, the licensing of taverns, the approval of tax rates and the care of the poor. Under the guise of regulating nuisances, it virtually legislated against what it thought wrong and in favor of what it thought right. In short, it performed all the important county governmental functions then required.

The provinces of East and West New Jersey adopted this comprehensive form of county government when counties were created by the simple devices of giving them a “court of sessions,” implying all the powers of its English prototype.

THE ENGLISH MANOR

The manor was an ancient governmental device of the county, also dating back to Anglo-Saxon times. In England “manor,”

“parish,” and “township” generally described various aspects of the local units of government.

The head of the manor was the lord who held the title to the lands from the king or from some overlord by right of descent. He presided over the great court of the manor or court baron. Subsequently, his deputy, the steward, usually presided but without any power to decide questions of law or fact.

The baronial court consisted of all the freeholders of the manor who in the 17th Century generally held their lands in fee subject only to the payment of a quit or ground rent to the lord. This was the same type of land tenure which prevailed in most of the colonies.

This court, assembly or meeting, with the steward presiding, settled all disputes between the lord and the freeholders, as well as among the freeholders themselves. They managed their common affairs. The administration of lands was a local governmental function and within the jurisdiction of the court. There were other manorial courts who handled the affairs of other classes of inhabitants, but it was the English baronial court that was the pattern for the town meeting of colonial America, including New Jersey.

This court or assembly based its decisions on the ancient custom of the people. It elected the local administrative officers; it had legislative, executive and judicial functions. It was in this people's court that the principle of government by common consent of the governed and of local autonomy developed.

In some colonies, notably New York, Maryland and Virginia manors were erected with lord, steward, and manorial courts. This did not occur in New Jersey, so that the courts held in the local towns were what in England would be called “lordless courts.”

THE ENGLISH BOROUGH OR CITY

Up to this time we have been considering units of local government which were not enfranchised or chartered by the king. The English borough or city, however, was a political unit chartered by the king. The charter was obtained to enable the borough or city to exercise, in addition to all of its inherent powers of local self-government, what were then considered special privileges, as for example the right to hold a market, maintain a fair and to have various special forms of government such as a mayor and council, board of aldermen and the like. The charter often conferred upon the borough or city independence also from control of the county. In fact, many boroughs and cities were reckoned as counties by themselves. During the 18th Century, Elizabeth, New Brunswick, Perth Amboy, Trenton and Burlington received charters of the English type from the royal governor.

THE TRADE GUILD

The direct ancestor of the provincial government of New Jersey was the English trade guild. The head officer of the guild had various titles, such as governor, bailiff, warden, master or overseer. He was assisted by a group of persons, similar to a board of directors of a modern corporation, called wardens or assistants, elected by the members of the guild at their general assemblies. The members were called freemen (or commoners), because they had served their apprenticeships and had taken the guild oath of allegiance. They were also collectively called the commonalty or the generality.

The general assembly of the guild, conducting itself as a general court, usually sat either annually, semi-annually or four times a year. It consisted of the head officer, his assistants and the members. The council of assistants or wardens, together with the head officer, also sat as a petty court, dealing with matters of less fundamental importance than did the general assembly. Both courts handled all governmental matters affecting their trade or craft—legislative, executive and judicial. They had power to impose fines and penalties for breach of the guild's laws. The concentration of power in a court might strike us as strange today, but in those days most governmental power was exercised through courts.

The guilds received their power and authority by virtue of charters or patents from the king. In addition to conferring powers of government upon the guild, the charter or patent granted monopolistic privileges to trade, so that it had a definite commercial value. The Norman kings, therefore, exacted fees for the grant of these valuable rights and used the grant of a charter and its privileges as a source of revenue.

THE TRADING COMPANY

Out of the merchant guild naturally developed the trading company. In 1505, King Henry VII granted to The Company of Merchant Adventurers of England, already in existence about 200 years, a charter empowering it in addition to electing a governor or governors, a board of 24 of the most "sad, discreet and honest persons" to be assistants to the governors. The officers were appointed by the governor and his assistants, which board had power to levy and receive fines from every merchant convicted of violating the statutes of the Company, and in default of payment, to seize the body and goods of the offender. The governor, deputy and council of 24 assistants, had power to determine all civil questions among the "brethren," that is the members and also non-members, on questions within the jurisdiction of the Company.

In the 16th Century, Queen Elizabeth chartered a number of such companies, composed of merchants and traders, to promote trade with Turkey, Russia and the Levant. In 1601, the East India

Company was chartered, and it was through the operations of this company that India was acquired by Great Britain, although the British government did not formally take India over until early in the 19th Century.

Between 1606 and 1640, several companies were chartered to promote trade with America and to establish settlements there, prominent among them being the Virginia Company and the Massachusetts Bay Company. All these companies were, generally speaking, given a form of government, with *quasi*-public governmental powers, corresponding to that of the guild, with a governor at the head, a council of assistants and a membership of "freemen" who later were the "shareholders" of the mercantile corporation. These companies promoted the early settlements in America, not as part of a design of imperialistic expansion by the British government, but to develop trade and to make a profit for the "adventurers" or investors who put money in the enterprise.

THE FIRST COLONIAL GOVERNMENT IN AMERICA

The Virginia Company gave to Virginia the first English colonial government, and it was modeled on the government of the Company itself. The first popularly elected general assembly of the Colony met at Jamestown in 1619. The governor sat at the front of the hall, below him the speaker, on either side the members of the council, and in the main part of the meeting house, the representatives elected by the freemen or freeholders from the various districts. Other colonies, whether established by trading companies or proprietors, followed a similar pattern of government. From 1640 to 1660, in the times of Charles I and Oliver Cromwell, when England was internally disrupted by civil war and political commotion, much of America became virtually independent, and it was during this period that Roger Williams in Rhode Island developed the principle of religious freedom and liberty of conscience, a principle not accepted in the mother country.

THE CAROLINA AND NEW JERSEY CHARTERS

Upon the reestablishment of the monarchy following the end of Cromwell's Commonwealth in 1660, more attention was paid to the American colonies by England. Originating in grants from Charles II, John Lord Berkeley and Sir George Carteret, the latter of an old French family of the Isle of Jersey, and six others, became possessed of a grant of a great area in the south known as "Carolina," and similarly Berkeley and Carteret became the owners of the territory they called New Jersey. First the Carolina Proprietors and then the New Jersey Proprietors issued charters or constitutions of government, similar in character to each other, for their respective provinces. These charters were much more comprehensive and better

drawn than other provincial charters previously granted, reflecting the English experience of half a century in colonial government in America.

THE GRANTS AND CONCESSIONS OF EAST NEW JERSEY

The charter issued by Berkeley and Carteret for New Jersey was dated February 10, 1664 (or rather 1665 according to our present calendar). The charter had a long title but it is generally referred to as the "Grants and Concessions." Upon the division of the Colony into two parts about 1675, the Berkeley and Carteret charter became the fundamental law for East New Jersey only. In this charter the familiar outlines of the trading company organization appeared with a governor, deputy governor, a council of not less than six and no more than 12 members appointed by the governor, and the representatives elected in the various towns by the freemen or freeholders.

Under this first constitution, the general assembly was given power to lay equal taxes for the support of the provincial government, and to make laws not inconsistent with those of England.

The governor, with the consent of the council, was authorized "to govern," and this power necessarily implied not only legislative but also executive and judicial power. With the like consent, he was authorized to appoint all public officers of the Province. He was also commander-in-chief of the militia.

The inhabitants were exempt from all provincial taxes, except those imposed by the general assembly. They were also given the right of religious freedom or liberty of conscience, both of which were extremely liberal for that era.

The charter was a progressive step forward in colonial government. The resemblances between it and the government of today are easily discernable. Its commercial and feudalistic influences were also evident. The Proprietors prescribed that the settlers should pay an annual rate or quit rent of from one-half to one penny an acre for lands received by them. The settlers were required to take with them arms, ammunition and six months provisions. The grants of land were conditioned upon their continued occupancy and the maintenance of a specific number of servants according to the allotment of land or lands they had been granted. These were not requirements of a constitutional nature but were designed to fulfill the business of the enterprise.

Records of the assets or stock of the enterprise, namely the lands, were kept in a precise manner. The Secretary or Register of the Province was to maintain not only exact public records, but also records of all grants of land and leases, after they had been properly acknowledged or witnessed. The Surveyor General was to survey all lands to be granted by the Proprietors. The procedure described

meticulously in the charter for keeping account of the lands was superior to any practice then followed in England. It may have been taken from the public records system of the Isle of Jersey, with which Carteret was undoubtedly familiar, because he had been Governor of that island during the civil wars in England. At any rate, the care with which directions were given in the charter in this regard was more a business measure of the Proprietors than a system primarily designed for the benefit of the settlers, but out of it grew the system of title records now maintained in every county in the State.

An administrative duty assigned to the general assembly, certainly not a parliamentary function, was the power given it to divide lands into huge lots of from 2,100 to 21,000 acres, a one-seventh part of each of which was reserved to the Proprietor. This was a duty probably connected with the idea of a methodical development and settlement of the various tracts of land to be set off on a manorial basis similar to the practice in England. Further evidence of the administrative aspect is to be seen in the requirement put upon the governor of consulting with the general assembly in the making of grants of land.

Berkeley and Carteret in 1665 conceived for New Jersey something like a palatine government similar to that of Durham, England, as provided in the Carolina charter. They were to possess the property conveyed to them in much the same manner as the bishop held that county in England. He enjoyed independent powers including those of maintaining a separate court of chancery and of common pleas, and other courts apart from the royal courts. He with his courts and assemblies also had many other *quasi*-independent governmental powers. This assumption is supported by the similarity of the Carolina charters of 1663 and 1665 with the charter for New Jersey, all of which issued from the same lords.

By these constitutions, the general assembly was empowered to divide the province into the territorial subdivisions of a county, namely hundreds, parishes, manors, etc., but no mention was made of dividing it into counties themselves. The English hundred (a division of the county), parish, township or manor was not incorporated, nor did any such division receive a special charter from the Crown. Neither the English hundred nor manor ever became part of the territorial divisions of New Jersey. The township, which did become the local government unit here, was like the manor but without a lord or manor house. The manor court became the town court or meeting. The manor administrative officers such as the overseers, constables and many others became the township officers.

Thus the Province of New Jersey started with a trading company framework of government, supplemented by principles of the county

palatine. The local government was on the English local governmental model.

INFLUENCES OF PROVINCIAL BEGINNING ON THE PRESENT
STATE OF GOVERNMENT

The influences of the trading company and of the municipal corporation, and also of the county palatine are still felt in our present State Government. These influences have prevented it from rising to the stature of a real parliament. This result is to be seen in the great mass of laws yearly passed by the Legislature, many of which concern themselves with details of administration and matters relating to the internal affairs of towns and counties. When the population of the Province was small (it was only 20,000 in 1700) and when the people were close to the general assembly (the laws were read in open court in each county after each legislative session), such provincialism was understandable if not actually beneficial. The State, however, at present has a population of over 4,000,000 people, and conditions are far different from the early colonial days. Because there was a small population in early days, and also in consideration of its lowly origin, the people regarded the colonial legislature as part of their local government. The State Legislature has never been dislodged from that position of early dominance over local affairs, although the original reasons for such dominance have long since disappeared. The State Legislature, however, is now remote from local affairs. It is neither necessary nor advisable for the Legislature to function any longer, as a clearing house for local governmental matters.

It is curious how an intangible notion of centuries ago, should subtly and unconsciously affect the minds of people for many generations afterwards, despite great changes in conditions which call for radically changed conceptions. At the start, the provincial government was organized for the handling of details. In 1665, New Jersey had little or no developed and seasoned local government for towns and counties, so that it was absolutely necessary for the provincial government to assume many functions of local government. Of course, in England central government and local government developed contemporaneously over the centuries within their respective spheres, so that each came to have its own respective channels of activity through custom and usage. In New Jersey the central government, established in advance, rapidly assumed a position in early days of control over the details of local government of the towns and cities in the rural and sparsely settled country.

THE FIRST ASSEMBLY

The first general assembly to meet in New Jersey, convened by the summons of Governor Philip Carteret, was held at Elizabeth

Town on May 26, 1668. After sitting four days, it recessed to meet again on November 3, 1668. The assembly then consisted of the governor, the members of his council, appointed by himself, and the "burgesses" or delegates elected by the towns. The towns represented were Bergen, Elizabeth Town, Newark, Woodbridge, Middletown, Shrewsbury, and at the first sitting two delegates from the "Delaware River."

THE EARLY TOWNS OF EAST NEW JERSEY

The Town of Bergen with its outlying plantations and territories comprised all of the present Hudson and then known parts of Bergen and Passaic Counties, except for that part of Passaic County lying south of the Passaic River. Bergen Town had been organized by Dutch settlers in 1661, who received from Governor Peter Stuyvesant a charter including a court to govern it, and this charter was subsequently confirmed by Governor Carteret.

Elizabeth Town included practically all of Union County. When Governor Carteret arrived there in 1665, he found four families who were the forerunners of others hailing from the eastern end of Long Island then under the jurisdiction of the New Haven or Connecticut government. While the early town records of Elizabeth Town have been lost, there is collateral evidence that these early settlers established their own local government on the model of a Connecticut town, as did the settlers at Newark shortly afterwards.

Newark included practically all of Essex County and also part of Passaic. The first settlers came in 1666 from Connecticut towns. Following the pattern of the Connecticut and Rhode Island Colonies and in the absence of any specific authority from higher sources, the first settlers constituted their own local government on the model of a Connecticut town. They elected their own magistrates, "town men" and many other local officers. To an Englishman, the establishment of his own local government on the basis of ancient municipal usages and customs without waiting for some superior authority, was no novel or revolutionary idea. He had possessed the right of local self-government since the days of the Anglo-Saxons.

Woodbridge was settled in 1667 and functioned as a town as early as 1668, according to its recorded town minutes. On June 1, 1669, Governor Carteret and the Proprietors gave it a charter similar to the English borough charter, providing for the familiar governing court of magistrates "for all ordering of public affairs within the said jurisdiction." As in Newark, these magistrates were to be elected by the freeholders who were the property owners.

Middletown and Shrewsbury were founded in 1665, pursuant to a grant of governmental power from Governor Nicholls of New York, before he had any intimation of the Berkeley and Carteret

patent. The recorded minutes start December 30, 1667, and on the following January 6, the town court, consisting of the constable and two overseers, sat to decide various administrative matters.

THE ASSEMBLY OF 1675 CREATES COUNTY COURTS

The next recorded meeting of the colonial legislature after 1668 was in November, 1675. At this sitting, the Town of New Piscataqua was represented, but no one appeared for the "Delaware River," probably because the Province was in process of being divided between East and West New Jersey, with different Proprietors for each of the two new Provinces.

This assembly created county courts for four counties which later came to be known as Bergen, Essex, Middlesex and Monmouth Counties. Each county had two towns, except Bergen, where there was only one. Seven years later, by act of the general assembly, these county courts were reorganized and the judges given the powers of justices of the peace. The county courts thereby became the governing bodies of the counties and they had and exercised all the powers of the English county courts. Such an exercise of implied governmental power would be shocking to a modern jurist.

THE CONSTITUTION FOR WEST NEW JERSEY

On March 3, 1676 (or 1677 according to our present calendar), the West New Jersey Proprietors issued their charter in the form of an agreement which was also signed by the settlers there.

This charter provided for a general assembly, the members of which were to be elected by the people. This assembly had legislative, judicial and executive functions, including many powers exercised by the council under the Berkeley and Carteret charter of 1665.

The West New Jersey charter made no provision for a council, but authorized the assembly to elect commissioners to govern the new Province. These commissioners governed in the familiar British fashion of government, as a court dealing with both judicial and administrative matters and to a minor extent legislative also. From the manner of election by the assembly and the scope of its activities, this court closely resembled the English trading company council, but it also functioned like an English county court.

While no governor was authorized by the charter, we find that from 1680, through a chain of events too complex to relate here, West New Jersey was provided not only with a governor but a deputy governor as well. Mr. Samuel Jennings, as deputy governor, approved the first laws to be passed in 1680 by the West New Jersey Assembly.

In most other respects, the West New Jersey charter was a replica of the Berkeley and Carteret charter. The colonists enjoyed all fun-

damental rights, including trial by jury, religious freedom and a guarantee against deprivation of life, liberty or property.

EARLY WEST NEW JERSEY TOWNS

The Town of Burlington was established in 1677 upon the arrival of the first English settlers under the new charter. It had many of the commercial and governmental rights and privileges of an English borough and port. The chief magistrate of the town was called the "burgess," and he, with the consent of the majority of the freeholders, had power to make such laws and orders as they judged might conduce to the promotion and benefit of the town, not repugnant to the laws of the Province, and he with the like consent was authorized to make annual appointments of a recorder (or town clerk), treasurer and such other subordinate officers as they should judge needful for the good government of the town. The grant of such broad powers would appear startling to the modern jurist or legislator steeped in the modern doctrine that no functions of local government may be exercised without specific authority from the State Legislature.

Salem, settled by John Fenwick in 1675, established at first a government independent of the West New Jersey Proprietors. Major Edmund Andross, Governor of New York, attempted to exercise control over this settlement, and to a large extent did so when he established a governing court for the town on October 26, 1678. Salem, however, ultimately submitted to the jurisdiction of the West New Jersey Assembly, although maintaining its own court independently of the commissioners' court at Burlington. Both these courts, incidently, apparently and eventually became the county courts of Salem and Burlington Counties, respectively. Under the acts of the West New Jersey Assembly, the Town of Salem received approximately the same form of government as Burlington.

THE EARLY WEST NEW JERSEY COUNTIES

At first, West New Jersey was divided into divisions called "tenths," which were the basis for representation in its general assembly, but by about 1686 the "tenths" were merged into the Counties of Burlington, Salem and Gloucester, and later Cape May. Reference has already been made to the development of county courts in Burlington and Salem; Gloucester either by an unrecorded act of the assembly or by the action of its own inhabitants set up a county court of justices.

The county courts in both Provinces exercised all governmental power in their respective counties, paralleling the county courts of quarter sessions which governed the English counties.

TOWNSHIPS CREATED BY COUNTY COURTS

The Burlington Court on November 6, 1688, pursuant to the

return of the grand jury, approved the division of the county outside of Burlington Town, into the following townships or constabularies: Nottingham, Chesterfield, Mansfield, Springfield, Wellingborough, Northampton, Chester and Evesham. On February 20, 1697, it created the Township of Maidenhead, afterwards called Lawrenceville.

The grand jury of the county court often acted as a sort of petty parliament, and its members apparently advised with the court to bring about needed administrative action by the court in the community in which such members resided. Grand-jurymen were often, if not always, elected from the various towns from which they came, so that the grand jury was virtually the representative body of the people of the county.

The Gloucester County Court on June 1, 1695, created the Townships of Gloucester, Waterford, Newton, Deptford and Egg Harbour.

The Cape May County Court on April 2, 1723, divided the county into three townships, called Upper, Middle and Lower Townships.

The Morris County Court in East New Jersey in 1740 created the Townships of Morris and Roxbury, and the Township of Mendham on March 29, 1740.

The townships had a government based on English customs and usages, consisting of town officers, as the clerk, surveyor of highways, overseer of the poor and constable, elected by the people at their town meetings, but responsible to the county court for the performance of their duties. Sometimes the town officers were appointed by the court or their selection at least approved by the court.

GOVERNING POWERS OF THE COUNTY COURTS

The county courts consisted of the justices of the peace of the county, and these justices sat quarterly as a county court of quarter sessions. With the collaboration of the grand jury and its members, the extent of which is now difficult to prove, the courts ruled the counties. In accordance with the English customs and usages, they in varying degrees supervised the assessment and collection of taxes, the laying out and maintenance of roads, the erection and maintenance of jails and other instruments of punishment, as well as of bridges, the granting of licenses to and the proper operation of taverns and ordinaries, the probate of wills and administration of estates, the appointment of and supervision over guardians, the indenturing of servants, the relief of the poor, and last, but not least, the selection, swearing in, the performance of duties by, and the auditing of accounts of public officials. Officials derelict in their duties or refusing to assume an office to which they had been ap-

pointed were fined, often without the formality of indictment or presentment by the grand jury. Towns, counties and even private citizens were also subject to punishment for failing to provide good government in their communities.

THE GENESIS OF THE MODERN COUNTY BOARD OF FREEHOLDERS

In 1709, the administration of jails and of court houses was turned over to a board of justices and freeholders, and later bridges were added to the jurisdiction of this board. This was a departure from the English system. By 1798, the justices had been dropped from this board and the county board of freeholders as we know it today was established. The county courts still retained, however, a large measure of governmental power in the counties, most of which has now fallen into disuse, leaving a serious gap in the governmental structure. The loss of county governing power through this development was a further cause for many matters relating to local government falling into the orbit of the State Legislature.

ADEQUACY OF LOCAL GOVERNMENT DURING EARLY VICISSITUDES

We may pass over other episodes in the early history of the Colony, such as the seizure of it by the Dutch in 1672, the interference in New Jersey governmental affairs by Col. Nicholls and Major Andross, Governors of New York, the death of Charles II in 1685, the dethronement of James II on December 11, 1688, and the annexation of New Jersey to the Territory and Dominion of New England in America in 1688, and the consequent cessation of the provincial governments in New Jersey until 1692, all of which more or less affected the operation of the New Jersey government. Throughout all these vicissitudes, not to speak of internal dissensions in the provinces, the local governments of the towns and counties functioned fairly well and were not seriously disturbed by interruptions of the provincial governments. The towns and counties afforded the people sufficient facilities of government.

NEW JERSEY BECOMES A CROWN COLONY

The proprietary central governments came to an end when the Proprietors surrendered the right to govern to the Crown on April 15, 1702. Queen Anne took the place of the Proprietors in the scheme of government. The two general assemblies were combined into one for the whole Province, in which assembly the Towns of Perth Amboy and Burlington were given direct representation. The authority of the Council, the members of which were thereafter appointed by the Crown, was extended to cover all of New Jersey, although the commissioners' court of West New Jersey continued to function as the Burlington County Court. Cornbury, the new gov-

ernor by the Queen's appointment, assumed jurisdiction over the entire Province. Altogether the general effect of the change upon local government, however, was slight.

The governor and council (as in East New Jersey) continued to be the upper house of the legislature and also the highest court of appeals and a court of pardons, but the governor was empowered, under the new order, absolutely to veto any bills passed by the legislature.

THE CONSTITUTION OF 1776

The next important development was the hasty adoption by the Provincial Congress of the Colony of a new Constitution on July 2, 1776, at the outbreak of the Revolutionary War. The government was divorced from the control of the Crown, with the members of the Council being elected one for each county by the "freemen," and the Governor appointed by a joint session of both houses of the Legislature for a one-year term. The appointing power of most other state officers was also transferred from the Governor to the same joint body. County coroners and sheriffs, theretofore appointed by the Governor, were to be elected by the people of the respective counties having the required property qualifications.

Since 1702, the people had been at odds with the royal governors. Even with a Governor of their own choosing, they were still impelled to reduce the office to insignificance. Thus did the revolutionary Provincial Congress of New Jersey express the accumulated resentment of the people against the governorship.

The Legislature clothed with both legislative and executive powers was now the supreme state governing authority. Otherwise, governmental matters, particularly in local government, remained as before.

THE INCORPORATION OF THE TOWNSHIP AND COUNTY

In 1798, the State Legislature passed an act incorporating all of the townships of the State, another departure from English practice. There were about 100 of them at the time. This was the first general act concerning municipalities in New Jersey. The powers of the officers and committee were described for the most part in general terms, and much was left to inference and implication. In enumerating the powers of the township meeting, the act provided that it might incur such necessary charges for such objects and purposes as it should deem proper or necessary. This was merely a declaration of already existing powers in the township.

If such an act prescribing only the bare outlines of government should, however, come before a modern court, these general grants of authority would be narrowly construed and quickly reduced to insignificance. In that day, however, that description of the township's powers implied a great deal.

Likewise in the same year the Legislature incorporated the counties of the State, still another departure from English practice, and in addition to giving the board of freeholders authority over poor houses, jails, court houses and bridges, also empowered it to do, fulfill and execute all the legal purposes, objects, business and affairs of the county, and in fact, to enact such by-laws and ordinances as it should deem necessary and convenient for the government of the corporation, provided they were not contrary to the Constitution or laws of the State.

Certainly, such a broad declaration of authority was not limited to those powers only specifically and expressly stated. The whole power of the county as it had been exercised previously was included in this broad grant. Local government was regarded by our forefathers as having an especial dignity and importance. They did not intend by these acts of incorporation to reduce the inherent powers of local government. The acts were designed for convenience and improvement, but the courts have ruled to the contrary.

THE CONSTITUTION OF 1844

The next Constitution was more carefully planned and developed in the Convention of 1844, and reflects the influence of the Federal Constitution adopted in 1787. The Governor was to be chosen by the people, and all property qualifications for voting were discarded. The legislative functions of the Council were transferred to the Senate, similarly composed of one Senator, instead of one Councilman, elected from each county. The Senate, however, did not retain the Council's judicial powers.

On the judicial side, the Governor lost his powers and was replaced by a separate Chancellor, who together with the six so-called "lay judges," corresponding to the members of the provincial council, and the justices of the Supreme Court constituted the Court of Errors and Appeals.

By this charter of 1844, the appointing powers of the Governor, with the advice and consent of the Senate, were somewhat restored, to include the judges, justices, secretary of state, attorney-general, county prosecutors, and other civil officers, but the two legislative houses in joint session retained their power to appoint the state treasurer and comptroller. County clerks, surrogates, sheriffs, coroners, and township justices of the peace were to be elected by the people.

The Constitution of 1844 was notable for two weaknesses: (1) its failure scarcely to recognize the existence much less the importance of local government, and (2) the extreme rigidity of the document in matters of detail, allowing little flexibility for the development of the government to meet changing conditions.

THE STATE LEGISLATURE
BECOMES SUPREME OVER LOCAL GOVERNMENT

The central government at Trenton proceeded to exercise its unrestricted power by invading the local communities, even to the extent of appointing local officials for various towns. The courts assisted this trend by ruling that the people of towns and counties had no rights to local government, save those conferred upon them by the grace of the sovereign namely, the central government of the State. No town in New Jersey could be certain of its powers, unless its authority was spelled out with the greatest precision and detail in the laws and charters granted by the Legislature, and even then such powers could be changed or revoked at the whim of the State Legislature.

UNSUCCESSFUL ATTEMPT TO
RESTORE RIGHT OF LOCAL HOME RULE

In 1875, various amendments to the Constitution were adopted forbidding the Legislature from passing any special laws to regulate the internal affairs of towns and counties as well as from appointing local officers or commissioners. The Legislature soon found that it could interfere in local affairs almost as effectively by "general" laws as by special, and did so. Provided the laws were drawn artfully, they were generally sustained by the courts. The people were worse off than the English under the Norman kings, and restricted to a far greater extent than in the colonial days—they had lost their Anglo-Saxon heritage, the right to local self-government.

By 1917, public opinion forced the Legislature to adopt for municipalities, the Home Rule Act, which was intended as a charter of liberties for them. In this act, every municipality was empowered to make such ordinances as it might deem necessary and proper for the good government, order, protection of persons and property, and for the preservation of the public health, safety and prosperity of the municipality and its inhabitants, but even this broad grant of power was whittled down by court interpretation to impotence.

THE LEGAL DOCTRINE THAT CITIES AND TOWNS ARE
MERE CREATURES OF THE STATE

The failure of the Legislature to rise to the level of a parliament of a great State is not entirely its own fault. While it sprang from sources associated with administrative and local affairs and was by force of circumstances obligated to take up certain county functions, as the county courts lost general governing powers, it might have overcome these difficulties had it not been for an unexpected development. This was the rule adopted in the early 19th Century by the American courts, with a few exceptions, that towns, cities and

counties were mere creatures of the state, existing and operating only by the grace of the sovereign. Furthermore, the courts said the people had no local governmental power except to the extent conferred by the sovereign (the state) in clear, express and specific language. Any doubt as to the grant of authority was resolved against the municipality. Thereafter it became necessary for the State Legislature to cross every "t" and dot every "i" in local governmental law-making; a great burden of detail was thus thrust on the Legislature from which there was no possibility of escape. Strangely enough, the American courts, although also "creatures of the state," did not limit themselves by the same restrictions but carried forward their powers, by implication, as had been exercised by the English courts of judicature, based on the usages, customs and statutes of England.

This doctrine was historically incorrect. It was based on the practice of the Norman kings of granting franchises or charters conferring special privileges of trade and government on the English borough and town. These franchises or charters, which later became certificates of incorporation, were granted, as has been stated, for a financial consideration and to raise revenue. The royal governors of New Jersey followed this practice of granting charters to boroughs and cities and a few towns, and from 1776 to 1875, when the Constitution was amended to prevent it, the State Legislature assumed the same power previously exercised by the royal governors in that regard. The borough or city charter was, however, in the first instance drawn in broad and general language, and the municipalities were not unduly restricted by a narrow view of their powers. They also were able to secure such charters whenever occasion required. They were granted mostly as a matter of course, if the cash was available.

The American courts, however, progressively drew the lines tighter and tighter, so that the charters and also the laws governing municipalities in general had to be more and more specific and express. For example, a few years ago a city of New Jersey found that the city clerk was overburdened with work and could not possibly give his attention to every detail of his office. The city then appointed a deputy to assist him and to perform the duties of the clerk in his absence. The charter of that city provided for the office of a city clerk and other specific offices by name and also for such subordinate and other offices as the governing body might from time to time create. That sounds like a sensible provision and broad enough to authorize the creation by local ordinance of the office of deputy city clerk. The New Jersey court, however, held otherwise and ruled that the Legislature must first authorize by state law the creation by specific name of the office of deputy city clerk. Thus we are re-

minded that we live for the benefit of the law and that the law is not for our benefit.

In formulating this pernicious doctrine, the courts forgot that the English always had a right to local self-government according to the ancient usages and customs of the people. They exercised this right in the county, township, parish and manor, which were not chartered divisions of local government. The people of the borough and city also had the same fundamental rights of self-government to which the special privileges of the charter were added. In actual practice, the central government of England interfered in local affairs but very little except for the purpose of revenue and to maintain proper standards of order and good government. Certainly, the English town never had to make annual pilgrimages to Westminster to get Parliament to pass laws covering every single little detail of municipal administration. The towns of New Jersey, on the contrary must, by court requirement, frequently apply to Trenton to procure specific legislation on the most minute matters of government to enable them to function. That is the reason for the great mass of mandatory laws passed at Trenton.

It is a strange anomaly that after the people of the State freed themselves from the yoke of the British Crown, they found themselves in a bondage to the State Legislature and to the state courts far worse than anything known in the times of the Stuart kings or when New Jersey was a mere Province. Democracy starts in the village and hamlet and in the town and city; if it breaks down at its fountainhead, it must fail in the upper levels of government.

Disregarding precedent, the strongest reason against this artificial rule laid down by the courts, which is not even justified by English practice, is the fact that it works badly. The State Legislature is not equipped by knowledge, experience or with the time to deal with local affairs. Therefore, the laws it passes with respect thereto do not follow general principles of good government, but are hastily drawn to meet specific problems of particular municipalities on a "patchwork" basis. Consequently, they are often inconsistent one with another and any logical development of local government on broad, general principles becomes impossible. Municipal law has therefore become a mere "hodgepodge" of legislation, difficult for the expert to comprehend and incomprehensible for the layman.

Another difficulty that the Legislature has in dealing with local affairs is the lack of any articulate public opinion to guide it. Public opinion in towns and cities is the guide to check upon the actions of local government bodies. Town ordinances are advertised; the newspapers generally comment upon them; and citizens have a right to express their opinions at public hearings before the local governing body prior to passage. Bills in the Legislature, on the con-

trary, usually do not even come to the knowledge of the local inhabitants until they are passed and become law. This manner of circumventing the public is a great encouragement to "pressure groups" to work behind the scenes and to secure for themselves special privileges or political advantages which no local council would care to grant.

Finally, while the Legislature has the power to pass laws imposing burdens on local municipalities, they do not bear any responsibility for their actions. It passes the laws leaving it to some other body "to pay the piper." This is not a sound principle of government.

The cumulative effect of all these factors constitutes a grave menace to the future stability of our local government. Its inefficiency and impotence is largely owing to the conditions described. Soaring tax rates are like red lights warning us of the imminence of catastrophe unless prompt remedial action is taken.

The fact that we have become accustomed to these abuses, even though sanctified by judicial decision, is no reason for not taking measures now to correct this fundamental weakness. It can only be corrected by constitutional provision.

RECOMMENDATIONS

The Convention should include in the proposed new Constitution provisions to accomplish the following purposes:

1. That counties and municipalities be guaranteed the right of local self-government in their internal affairs, subject only to such restrictions as may be imposed by the State Legislature.
2. That the State Legislature be prohibited from unduly interfering in such internal affairs, except to provide adequate and proper standards of government.
3. That the right of counties and municipalities to make ordinances for the good government of their respective communities not inconsistent with or repugnant to state law, be confirmed, and that this right shall not be abridged in any manner whatsoever.
4. That the State Legislature be authorized to decentralize its control, particularly on administrative matters and matters of less legislative importance, with respect to local government, by delegating some of its powers to the county, city or town. Such delegation of authority should be subject to recall.
5. That in general the provisions of the new Constitution be limited to a declaration of principles and rights, with a description of the fundamental organs of government, so as to prevent rigidity and inflexibility regarding improvements in government in the future.

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STATEMENT OF THE
FEDERATION OF NEW JERSEY THEATRES

FEDERATION OF NEW JERSEY THEATRES
208 Ferry Street, Newark 5, New Jersey

July 30, 1947.

Hon. Christian J. Jorgensen,
Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

Dear Mr. Jorgensen:

Statement of the Federation of New Jersey Theatres

1. The theatres of New Jersey ran bingo games for a number of years, charging the same price of admission on "Bingo Nights" as on other nights and giving the same show.

2. Although theatre patrons paid nothing to play the game, the courts held it a game of chance and declared it illegal.

3. The ban on all bingo games in New Jersey was the result of the many complaints that came to chiefs of police and to the prosecutors because of the large sums of money lost by players, many of them women who needed the money for house or family. The innocent 10c games that started in the firehouse grew to \$1.00 games in the armory where the sponsor received a small percentage of the receipts for the use of its name.

4. New Jersey theatres are opposed to Alternative "B" because it would permit almost any group of people to conduct games of chance and would set up unfair competition against theatres.

5. If the committee should decide to keep Alternative "B," we ask for the inclusion of theatres so that they may, when necessary, run bingo games to meet the unfair competition that would result.

Very truly yours,

Federation of New Jersey Theatres
GEORGE GOLD,
Chairman

HUDSON COUNTY REPUBLICAN COMMITTEE PROPOSAL ON BINGO

HUDSON COUNTY REPUBLICAN COMMITTEE

Office of
THE COUNTY CHAIRMAN

Constitutional Convention of New Jersey of 1947

Legalizing of the Playing of Bingo

RESOLVED, that the following be agreed upon as part of the proposed new State Constitution:

That Article IV, Section VII, paragraph 2 of the present State Constitution be revised, altered or reformed, so that the revised Constitution will permit the playing of the game of bingo if sponsored by church, charitable, fraternal and veterans' organizations, where the proceeds from such game of bingo shall be used exclusively for such church, charitable, fraternal and veteran purposes.

Submitted after approval by the Hudson County Republican Committee, June 20, 1947.

CARL A. RUHLMANN,
County Chairman

HUDSON COUNTY REPUBLICAN COMMITTEE PROPOSAL ON GAMBLING CLAUSE

RESOLVED, that the following be agreed upon as part of the proposed new State Constitution:

That Article IV, Section VII, paragraph 2 of the present State Constitution, which reads as follows:

“It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, book-making, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.”

be revised, altered or reformed to read as follows:

“It shall be lawful to hold, carry on and operate in this State games of chance known as bingo, exclusively for the benefit of religious, charitable, fraternal and war veterans' organizations legally incorporated under the laws of this State and also race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form, except bingo exclusively for the benefit of religious, charitable, fraternal and war veterans' organizations legally incorporated under the laws of this State as herein stated, shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, book-making, or gambling of any kind be authorized or allowed within this State, except bingo exclusively for the benefit of religious, charitable, fraternal and war veterans' organizations legally incorporated under the laws of this State, and pari-mutuel betting on the results of the racing of horses only, from which

the State shall derive a reasonable revenue for the support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.”

Approved by the Hudson County Republican Committee on June 16, 1947, and submitted through its Chairman.

CARL A. RUHLMANN,
County Chairman

545 Broadway
Bayonne, New Jersey
June 26, 1947.

RESOLUTION OF HUDSON COUNTY
REPUBLICAN COMMITTEE

545 Broadway
Bayonne, N. J.

June 18, 1947

A RESOLUTION

Adopted, unanimously, by the members of the Executive Committee of the Hudson County Republican Committee in session at No. 60 Bergen Avenue, Jersey City, Tuesday evening, June 16, 1947.

WHEREAS, the present State Constitution forbids the playing of bingo even when sponsored by church, charitable, fraternal and veteran organizations; and

WHEREAS, the same charter permits pari-mutuel betting on horse races sponsored by private interests; and

WHEREAS, the members of this committee have long felt that as a result of this incongruous situation, many worthwhile charitable causes have suffered unnecessarily because the playing of bingo had been declared illegal by two Chief Justices of the New Jersey Supreme Court even where the proceeds of the game were earmarked for charitable purposes; and

WHEREAS, the voters of this State have recently voted overwhelmingly to authorize the convening of a State Constitutional Convention for the purpose of writing a new charter and elected 81 delegates to perform this task; and

WHEREAS, these delegates are empowered to include among the various provisions of the new charter one that would legalize the playing of bingo when sponsored by church, charitable, fraternal and veteran organizations,

THEREFORE BE IT RESOLVED, that this committee, representing the wards in Jersey City and the other subdivisions of Hudson County, go on record favoring the inclusion of a provision in the proposed Constitution that will make the playing of bingo lawful when it is sponsored by church, charitable, fraternal and veteran organizations; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to each of the 81 delegates that make up the Constitutional Convention now in session at New Brunswick so that they may be apprised of our desire and thereby induced to write into the new charter a provision authorizing the playing of bingo under the conditions listed above.

Respectfully submitted,

MILLARD E. VANNER, *Secretary*

CARL A. RUHLMANN, *Chairman*

RECOMMENDATIONS OF THE LEAGUE OF WOMEN VOTERS OF NEW JERSEY

*(Excerpts from the League's brochure, "Constitutional
Changes," June 1947)*

THE LEGISLATURE

No attempt is here made to cover all of the details of legislative procedure which must be included in a Constitution. The proposals discussed are those upon which the League of Women Voters, by virtue of study and experience, feels prepared to make recommendations.

SESSIONS OF THE LEGISLATURE

The two houses of the Legislature shall meet separately, in regular sessions, annually on the second Tuesday in January, and at such other times as may be prescribed by law. The Senate shall remain in continuous session and shall convene at the call of its President or of the Governor for the sole purpose of receiving and acting upon nominations.

Special sessions shall be called by the Governor upon petition by a majority of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require.

Explanation—It is recommended that the Legislature meet at least annually, and that there be no limit set to the length of the session. There is little sound argument for setting an arbitrary constitutional limit. The need for legislation is not restricted to any set period, but may occur at any time. An arbitrary limit causes an inevitable last-minute jam in which bills may be passed with undue haste or perhaps lost in the shuffle. Serious problems arising close to the adjournment date may necessitate the calling of special sessions, a situation which has occurred this year. More time than is available under a limited session may be essential for careful committee consideration and adequate deliberation of difficult legislation.

The recommendation that the Senate remain in continuous session is made in order to make possible immediate action on appointments. Vacancies in public offices may occur at any time and it is desirable that they be promptly filled.

The proposal regarding the calling of special sessions is recommended in order to give this power to the Legislature as well as to the Governor.

COMPOSITION OF THE LEGISLATURE

1. The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties, respectively, for a term beginning at noon on the second Tuesday in January next following his election and ending at noon on the second Tuesday in January four years thereafter.

The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially.

Explanation—This is the wording of the 1944 draft, Article III,

Section II, paragraphs 1 and 2. The provision for "one Senator from each county" *must* be retained under the terms of the referendum.

The four-year term for Senators here recommended has been adopted by 31 states. This longer term saves valuable time and expense for candidates and voters, adds dignity to the office, and brings about more careful consideration of candidates and issues.

The combination of longer terms and overlapping terms provides the political stability and continuity which is the chief justification for having an upper chamber.

2. The General Assembly shall be composed of members apportioned among the counties as nearly as may be according to the number of their inhabitants, as determined by the latest census of the United States, except that each county shall at all times be entitled to one member and the whole number of members shall never exceed 60. An apportionment of members of the General Assembly shall be made by the Legislature at its first session after each federal census, and shall remain unaltered until another census shall have been taken.

Members of the General Assembly shall be elected by the legal voters in such manner as may be prescribed by law for a term beginning at noon on the second Tuesday in January next following their election and ending at noon on the second Tuesday in January two years thereafter.

Explanation—The exact wording of this proposal is recommended. It has been carefully phrased to make constitutionally possible legislation establishing single member districts and the "proportional representation" method of voting in counties having more than one Assemblyman, in case this should prove desirable at some future date. The courts have ruled that the phrase, "voters of the counties," in the present Constitution prohibits the setting up of single-member districts.

A two-year term for Assemblymen is recommended. Such a term is now in force in 43 states. The present constitutional provision for a one-year term involves Assemblymen in two elections each year, thus discouraging careful attention to legislative duties.

3. Vacancies in the office of Senator or Assemblyman shall be filled for the remainder of the unexpired term by election at the next general election held not less than 60 days after the occurrence of the vacancy.

Explanation—This provision, worded as in the 1942 draft, Article III, Section II, paragraph 5, is recommended. Lengthened terms for Senators and Assemblymen make it essential that means be provided to fill vacancies occurring by death, illness or resignation. Otherwise some counties may go for long periods without representation.

LEGISLATIVE OFFICE

1. Members of the Legislature shall receive an annual salary, as may be prescribed by law, which shall neither be increased nor diminished during the term for which they are elected and hold office; and they shall receive no other allowance or emolument, directly or indirectly, except for service on a legislative council and as presiding officer of either house.

Explanation—This proposal is recommended. The failure to in-

clude a specific salary figure is intentional. It seems wise to determine the amount to be paid by a method free of rigid, unadjustable constitutional restrictions, so that the compensation may be varied with economic changes. If, however, the Convention determines to set the salary, it should do so at a figure high enough to permit the legislator to devote himself to his legislative duties during and between sessions. The \$500 established in the present Constitution is insufficient compensation for the time and services rendered.

2. No member of Congress, no person holding any office, position or appointment of profit under the government of this State or any of its civil divisions, or of the United States, and no judge of any court shall be eligible to a seat in the Legislature.

The seat of any member of the Legislature shall be vacated by his acceptance of any office, position or appointment of profit under the government of this State or any of its civil divisions, or of the United States.

No member of the Senate or General Assembly shall, during the term for which he was or shall have been elected, and for one year thereafter, be nominated, elected, or appointed to any State office or position which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term.

Explanation—This wording is recommended. The three parts are necessary to cover all aspects of the problem. It is considered desirable that (1) persons already holding federal or other state office should be ineligible to sit in the Legislature; (2) persons in the Legislature should forfeit their seats upon acceptance of other public office; (3) the Legislature should be discouraged from creating jobs expressly for any of its members.

Constitutional prohibitions on dual office-holding have existed since 1776. Prohibitions similar to the above are contained in the present Constitution, and were included in the 1942 and 1944 drafts. Dual office-holding is contrary to the theory of separation of powers; it prevents independent judgment by the law-maker; it may cause the slighting of one of the offices held, and it may be a form of coercion or bribery.

LEGISLATION

1. All bills and joint resolutions shall be read at least by title three times in each house. No bill or joint resolution may be considered on second reading until at least one day after the first reading thereof, nor on the third reading until at least one day after the second reading thereof; unless the Governor shall have certified that an emergency exists requiring its immediate passage and each house shall have ordered immediate consideration on third reading by a two-thirds vote of all the members.

No bill or joint resolution shall be considered on third reading in either house until it shall have been printed and shall have been on the desks of the members of the house, in its final form, at least three calendar legislative days, unless the Governor shall have certified that an emergency exists requiring its immediate passage and the house shall have ordered its immediate consideration on third reading by a two-thirds vote of all the members.

Explanation—The exact wording of this proposal is recommended. Its purpose is to make sure that sufficient time is allowed

for careful consideration of all bills. Hasty action under suspension of the rules, at present a too-common occurrence, is discouraged. Only when the Governor certifies to an emergency may these restrictions be circumvented.

2. A recorded vote shall be required on each bill.

Explanation—This is now New Jersey legislative practice, but it is recommended that it be safeguarded by inclusion in the Constitution.

3. Each house of the Legislature shall establish such committees as may be necessary for the efficient conduct of its business. Each committee shall keep a journal of its proceedings as a public record. One third of either house shall have the power to relieve a committee of further consideration of a bill.

Explanation—This proposal is recommended in order to correct a serious fault of New Jersey legislative procedure. The following quotations from the statement accompanying the 1942 Report of the Commission on Revision of the New Jersey Constitution describes the present situation.

“A major cause of legislative confusion has been the lack of opportunity for full and careful consideration of legislative matters. Each member of the Legislature is expected to be familiar with criminal laws, state departmental needs, the tax structure and a host of other intricate and involved questions. Meanwhile, most committees in the Legislature meet neither long nor often.

The system results in the breakdown of the best features of the committee system and the necessity for disposing of major legislation through the hazardous proceedings of party caucuses.”

POWERS OF THE LEGISLATURE

1. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officers, except as expressly provided in this Constitution.

Explanation—This proposal is recommended. Appointment of executive officers by the Legislature invites interference in administrative details, tends to corrupt by offering opportunities for legislative patronage, reduces the dignity of the Legislature and impedes its deliberative processes.

2. The State Auditor shall be elected by the Senate and General Assembly in joint meeting for a term of four years and until his successor shall be qualified into office.

Explanation—This proposal is recommended. It differs from the 1944 draft, Article VI, Section I, paragraph 1, which provided legislative appointment of the Treasurer and Comptroller in addition to the Auditor. Since under modern administrative practice the Treasurer and Comptroller function as an essential part of state administrative machinery, they should not be appointed by the Legislature.

The Auditor is a servant of the Legislature, and his function is to act as a check on the handling of state funds by the Executive Branch of the government. He should therefore be appointed by

the Legislature, and his position should be constitutionally protected.

3. The Legislature may punish for contempt any person who shall refuse to attend as a witness or to produce any paper proper to be used as evidence before the Legislature or either house thereof or a committee of either house, or to testify concerning any matter which may be a proper subject of inquiry by the Legislature in preparing for legislative action. The punishment and mode of proceeding for contempt in such cases shall be prescribed by law.

Explanation—Legislative investigation is usually considered an inherent right, and is specifically mentioned in several state constitutions. Since it has been questioned in New Jersey the inclusion of such a provision is recommended.

PUBLIC WELFARE

Neither the present New Jersey Constitution nor any of the proposed revisions have contained a Public Welfare Article. The proposals recommended below seem, however, to fit most logically under such a division, which is contained in the *Model State Constitution*.

1. *Public Education.* *The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state between the ages of 5 and 18 may be educated, and of such other educational institutions, including institutions of higher learning, as may be deemed desirable.*

Explanation—This wording, contained in the *Model State Constitution* Article X, Section 1000 is recommended. The 1944 Draft, Article III, Section VI, 7 contained a provision to provide public education for children from 5 to 18. The state is already providing grants for higher education in the form of appropriations for a State University, and for scholarships.

2. *Public Housing.* *The state may provide for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto, in such manner, by such means, and upon such terms and conditions as may be prescribed by law.*

Explanation—The wording of this proposal is contained in the *Model State Constitution*, Article X, Section 1004. It is a permissive article which gives constitutional authority for activities which are now conducted in New Jersey under various legislative provisions.

3. *Public Health.* *The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its civil divisions and in such manner and by such means as the Legislature shall from time to time determine.*

Explanation—This proposal is contained in the *Model State Constitution* Article X, Section 1001, and is a part of the New York Constitution, Article XVII, Section 3.

4. *Public Relief.* *The maintenance and distribution, at reasonable rates, or free of charge, of a sufficient supply of food, fuel, clothing, and other common necessities of life, and the providing of shelter, are public functions, and the state and its civil divisions may provide the same for their inhabitants in such manner and by such means as may be prescribed by law.*

Explanation—This proposal is contained in the *Model State Constitution*, Article X, Section 1002. It combines the New York State Constitution, Article XVII, Section 1, and the Massachusetts Constitution, Amendments, Article XLVII.

5. *Conservation.* *The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the state are public uses, and the Legislature shall have power to provide for the same and to enact legislation necessary or expedient therefor.*

Explanation—This proposal is contained in the *Model State Constitution*, Article X, Section 1005. It is adapted from the Massachusetts Constitution, Amendments, Article XLIX.

LOCAL GOVERNMENT

Although the League of Women Voters does not feel prepared to submit an actual draft of a Local Government Article, it has recommended that one be included. More specific provisions for the organization of counties and municipalities than those contained in the present Constitution seem necessary because of the vast changes which have occurred in New Jersey since the present Constitution was written. In 1844 urban centers were few and small. Today the concentration and complexities of urban life, and the problems of cities, differing according to size, location, etc., make a degree of self-government, without application to the Legislature, desirable. The Constitution should make clear which powers the State delegates to municipalities and which powers it reserves to itself.

LETTER FROM MEN OF TRINITY METHODIST CHURCH

TRINITY METHODIST CHURCH
Clinton Ave. at Treacy
Newark 8, N. J.

Secretary, Legislative Committee,
N. J. State Constitutional Convention,
New Brunswick, N. J.

Dear Sir:

It has been brought to the attention of this group, Men of Trinity, that certain church organizations are bringing pressure to bear upon the Legislative Committee to include a clause in the new Constitution permitting gambling when used for charitable purposes. This group wishes consideration of its opinion regarding this issue.

The inclusion of a section permitting gambling is in direct opposition to the expressed desire of Governor Driscoll and other constitutional experts that the new Constitution be kept broad in scope and general in outline. In order to take care of the promised growth of New Jersey and to allow for the greatest latitude in interpreting the Constitution to fit changing times, details *must* be eliminated.

New Jersey is one of the most progressive states in the Union. Should it sully its reputation by placing within the basic laws of the State a section condoning a vice? Should it, to please certain pressure groups who seem to think only in terms of money, place the reputation of the State on a par with that of Nevada? If gambling, conducted for charitable purposes, can be condoned by our basic laws, then a section permitting prostitution to take care of the necessities of life would be quite appropriate. The vice of prostitution is just as hoary with age and just as desired by a large segment of our people as is the vice of gambling.

It is noted that organizations affiliated with a certain church are sponsoring the inclusion of this section, and their representatives state that in the eyes of God gambling is not a sin. A church that will sanction a vice, with all its possibilities of corruption of the moral fiber of a people, for the purpose of material expediency is tolling the bells of its own doom. There is no question but that many teen-agers get their first contact with the vice through these churchly organizations.

An organization of people, a state, will prosper just as long as it adheres to certain principles based upon righteousness, justice, and truth. When it lowers the moral and ethical bars just a little, it will find the step easier to lower them completely later on, and when

that time comes the state no longer exists.

May we suggest, then, that in drawing up your section of the Constitution, you let truth and justice be your guide and not greed and corruption.

Very truly yours,

A. L. SANDIFER, *Chairman*
Service Committee,
Men of Trinity

Authorized by unanimous vote at
a regular meeting July 6, 1947
E. A. RANSOM, *President*
Men of Trinity

LETTER AND RESOLUTION OF THE TOWNSHIP OF MILLBURN

THE TOWNSHIP OF MILLBURN
County of Essex
Established March 20, 1857
Millburn, New Jersey

August 6, 1947

Mr. Oliver F. Van Camp, Secretary,
Constitutional Convention,
New Brunswick, New Jersey.

Sir:

On Monday, July 21st, the undersigned appeared before the Legislative Committee of the Constitutional Convention at New Brunswick, on behalf of the Township Committee of the Township of Millburn with the following plea.

It was requested that machinery be provided for in the proposed Constitution to make it possible for a municipality to void or repeal by referendum any matter which it had theretofore adopted by referendum.

Under existing procedure, whether by law or otherwise, it is practically impossible for a municipality to rid itself of what might well have turned out over a period of time to be a serious impediment to the municipality.

As a case in point, the writer pointed out as a concrete example the situation with reference to civil service. Under New Jersey case law—*Warren v City of New Brunswick*, 79 N.J.L. 191, 80 A. 842—our courts have held that a municipality having once adopted the measure, no opportunity had been given by law to regain the former status by a repeal of the ordinance of adoption. Nor, as far as we know, can it be done by any other means or method. Civil service is merely an example, for in principle the question merits attention on a much wider scope.

This condition is archaic in principle. Conditions may change over a period of years, possibly for the better, but if for the worse nothing can be done. The municipality is helpless.

Yet, at this very time, the State recognizes the need for a change in the matter of our Constitution. What better example can possibly be found in justification of our plea in question.

Considerable attention is presently being focused upon an effort to liberalize the Constitution to the end that the municipalities be given greater freedom under the so-called Home Rule principle. Our request should strike an accord with the advocates of this plan.

As a matter of equity or just plain matter of fact sense of fairness, it would seem that no person or municipality should be so completely stymied or shackled in the face of constantly changing conditions, as municipalities are in the premises in question.

We respectfully urge your most thoughtful consideration of the foregoing.

Very truly yours,

THEODORE L. WIDMAYER, *Township Clerk*

P.S. There is enclosed herewith certified copy of resolution duly adopted by the Township Committee of the Township of Millburn in connection with the above.

RESOLUTION MEMORIALIZING THE CONVENTION FOR
THE REVISION OF THE CONSTITUTION OF
THE STATE OF NEW JERSEY

Be it resolved by the Township Committee of the Township of Millburn in the County of Essex, as follows:

1. That the Convention, presently sitting for the determination and recommendation of a revision of the Constitution of the State of New Jersey, be and hereby is respectfully urged and requested to consider and recommend the inclusion, in such draft of revision of the Constitution of the State of New Jersey as said Convention may see fit to recommend for adoption by the people of said State, of a provision that a majority of the voters of any county or municipality who may have voted in favor of the adoption in such county or municipality of any statute of the Legislature of said State, by the terms of which such adoption is made dependent upon such favorable vote, may, at any subsequent election to be held not less than one year after the election at which such vote was cast, cause such statute, by their majority vote at said later election, to be rendered inapplicable to and inoperative in such county or municipality; and the Legislature shall prescribe for the submission of the question to such voters at such later election, procedure similar to that prescribed for the initial submission to such voters of the question of the adoption of such statute.

2. That a true copy of this resolution, certified as such by the Clerk of this Township, be transmitted with all convenient speed to each of the following officers, that is to say, the President of the Constitutional Convention aforesaid, the Clerk or Secretary thereof, the Governor of the State of New Jersey, the chairman or other acting head of the Essex County delegation to said Convention, the Chairman of the Legislative Committee of said Convention, and the

Executive Secretary of the New Jersey State League of Municipalities.

3. That this resolution shall take effect immediately.

I, THEODORE L. WIDMAYER, Clerk of the Township of Millburn in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Township Committee of the Township of Millburn in the County of Essex, New Jersey, at a regular meeting held on the 4th day of August, 1947.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Township this 5th day of August, 1947.

THEODORE L. WIDMAYER, *Township Clerk*

PLANNING AND DEVELOPMENT PROPOSALS OF THE MONTCLAIR PLANNING BOARD

TOWN PLANNING BOARD
Municipal Building
Montclair, New Jersey

June 23, 1947.

To the Constitutional Convention
of the State of New Jersey.

There is submitted herewith copy of a report of a committee of this Planning Board recommending appropriate provisions for inclusion in the new Constitution of the State to enable the Legislature to grant to municipalities, political subdivisions and agencies of the State, the power needed to carry out modern planning and development programs to conserve what is good, remove blight, and, with the aid of private capital, make such improvements as are necessary and desirable to preserve and create for the State prosperous, healthful and attractive communities.

The loss of ratables in established municipalities is evidence of the need of remedial action. In Essex County alone there was a loss of ratables during the past ten years of almost \$300 million. The welfare of the State, its municipal subdivisions, and the people, is at stake. It is of the utmost importance that the public interest in the restoration of prosperity to our cities should be recognized and the Legislature be authorized to grant to municipalities such power as may be essential to enable them to act intelligently in these matters.

We trust that these proposals will be found to conform to the recommendations of the Governor that constitutional provisions should omit legislative detail. They are submitted in the hope that they may be found of value when the Convention considers this vital subject.

Respectfully submitted,

C. A. CAPRON,
Chairman.

PROPOSALS FOR PLANNING AND DEVELOPMENT PROVISIONS FOR INCLUSION IN THE REVISED CONSTITUTION

Your Committee herewith submits three provisions for inclusion in the Constitution, which it believes are adequate to enable the Legislature to authorize modern planning and development in this State.

Zoning

The following constitutional provision is recommended:

The Legislature may enact general laws under which political subdivisions of the State may limit and restrict to specified districts and regulate therein, buildings and structures according to their construction, and the nature and extent of their use and the nature and extent of the uses of land; and may require the discontinuance, after a reasonable time from the adoption of such regulations, of structures and uses which are contrary to said regulations. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place, for the protection and conservation thereof.

Comment:

The necessity for zoning is universally recognized. Because of adverse decisions of the New Jersey courts, however, it was necessary to amend the Constitution in 1927 to permit zoning. Without constitutional authority there is danger that these adverse decisions will be followed by the courts and it is therefore advisable to include a zoning provision in the new Constitution. The power to zone should be extended to political subdivisions of the State other than municipalities, so that areas beyond the limits of municipalities may be properly zoned. No zoning can be wholly effective unless existing non-conforming uses are discontinued after a reasonable time. The requirement as to a reasonable time for continuance of such uses should afford complete protection to such interests.

There is a growing public consciousness that the use of the property adjoining public highways should be restricted. This will be of great importance to the development of New Jersey's program of freeways and parkways. Because of a doubt whether the courts would sustain a mere legislative act for this purpose, it is believed necessary to grant the power expressly in the Constitution.

Development and Redevelopment

The following constitutional provision is recommended:

The acquisition of real property for development or redevelopment of any area in accordance with a plan duly adopted in a manner prescribed by the Legislature, whether the uses to which such area is to be devoted be public or private uses or both, is hereby declared to be a public use. The Legislature shall make laws governing acquisition, use and disposal of such property by an agency of the State or a political subdivision thereof. The Legislature may authorize the organization of corporations or authorities to undertake such development or redevelopment or any part thereof and may authorize municipalities to exempt their

improvements from taxation, in whole or in part, for a limited period of time, under conditions as to special public regulations to be specified by law or by contract between any such corporation or authority and the municipality, provided that during the period of such tax exemption the profits of the corporation and the dividends paid by it shall be limited by law.

Comment:

If the municipalities of this State are to remain financially solvent it is essential that they should be enabled to carry on such development and redevelopment projects as may be necessary to make them attractive for residential or commercial uses. They must be in a position to compete with undeveloped areas which have now been rendered available for such purposes through better means of transportation. For these purposes very wide and inclusive authority should be conferred subject, of course, to regulation by the Legislature.

It is now recognized by all who have studied the subject that the profits which may be obtained by the redevelopment of land within our cities are not sufficiently great to induce private capital to engage in such development unless the cost of the present buildings now occupying substandard areas, or at least some portion thereof, is absorbed by the Government or some agency thereof. This cost may be absorbed by our municipalities directly by paying for the acquisition of the land to be redeveloped, and after clearing it of obsolete structures, leasing or selling it to a private developer; or such cost may be absorbed by partial tax exemption for a limited period of years. It is thought that this second method may be less of a financial burden upon our municipalities and should therefore be permitted. During the period of tax exemption the property owned by private capital should be limited as to dividends and subject to governmental control.

Official Street Map

The following constitutional provision is recommended:

The Legislature may authorize municipalities to adopt an official map showing the location of the public streets and other public ways and places which it is intended to establish in the future, and may enact reasonable regulations concerning the erection of any building or structure in such location after the adoption of such map.

Comment:

Legislation now exists to permit municipalities to establish proposed streets under an official map to protect the streets so established against encroachments by private use. Considerable doubt has been raised as to the power of the Legislature to grant such

rights. These rights are important to a municipality from a financial standpoint and for the purpose of developing a proper street plan, and the power to exercise such rights should be expressly granted.

Committee of the Montclair Planning Board
on Constitutional Revision:

CHARLES B. ALLING,
C. ALEXANDER CAPRON,
NEWTON H. PORTER, JR.,
ERNEST G. FIFIELD, *Chairman*

June 1947.

LETTER OF MONTCLAIR TOWN PLANNING BOARD

TOWN PLANNING BOARD
Municipal Building
Montclair, New Jersey

July 31, 1947

Mr. Dominic A. Cavicchia,
57 Keer Avenue,
Newark, New Jersey.

Dear Mr. Cavicchia:

From the newspaper reports and the tentative drafts of the recommendations of the Legislative Committee, it appears that most of the recommendations of the State Federation of Planning Boards and of our Montclair Committee on Constitutional Revision have been omitted. In the opinion of the many sincere and capable people who have worked out these suggestions, the powers which the Legislature would thereby be authorized to grant to municipalities are of the utmost importance to the welfare of every urban area in New Jersey, and it goes without saying that upon the welfare of the urban areas depends the welfare of the State. Although it might be argued that some of these powers are inherent in the general police powers of the State, it is the opinion of those who have studied the question that the danger of constitutional objections would cause sufficient uncertainty to block action, and should therefore be set at rest by appropriate provisions in the Constitution.

Mr. Harold Buttenheim, editor of the *American City* magazine, has spent innumerable hours and received the expert advice of outstanding authorities all over the country in preparing these measures for both the 1944 and the 1947 revisions. He has incorporated the suggestions of the late Alfred Bettman, the most outstanding lawyer on planning legislation in the country. These proposals have been checked with leading planners and are endorsed by Mr. Blakeman of the Planning Division of the Department of Economic Development; Mr. Alexander and Mr. Bartholomew of Bartholomew and Associates, consultants to Newark, East Orange and Bloomfield; and Mr. Scott Bagby, consultant to Montclair and Glen Ridge.

Our Montclair committee carefully studied all the proposals and in the interest of a prosperous North New Jersey area presented in brief form to the Legislative Committee the most essentially needed provisions.

I strongly urge that if it is at all possible the Essex County delegation request that the Legislative Committee reconsider our pro-

posals and the proposals of the Federated Planning Boards before final presentation of this section of the Constitution.

Sincerely yours,

C. A. CAPRON, *Chairman*

Copies to Essex County Delegates

NEW JERSEY COMMITTEE FOR
CONSTITUTIONAL REVISION PROPOSALS
ON LOCAL GOVERNMENT

General Statement and Drafts

Presented by John E. Bebout

Chairman, Research and Drafting Committee,
New Jersey Committee for Constitutional Revision

*The Need for Home Rule Provisions in the
New Jersey Constitution*

The most obvious need for home rule in New Jersey is for a provision whereby the people of any county or municipality can adopt a sound frame of government of their own choosing. The people of a New Jersey municipality wishing to change their form of government today have only two choices: to adopt the commission form as set up under the Walsh Act, or the council-manager plan as set up under the City Manager Act, or if they already have either the commission plan or the council-manager plan, to return to the form previously abandoned as unsatisfactory. Neither the Walsh Act nor the City Manager Act provides anything like the best charter of its kind that could now be devised. Defects in these acts have kept the people of more than one municipality who had every reason to desire a change from making use of them. Furthermore, there is no general act which makes the standard strong-mayor plan available and there is no provision whereby the people of a county can adopt a modern form of government such as may be found in an increasing number of counties in other states. In the last half-century the people of American communities in states which permitted them a fair degree of home rule have made great progress in local government. New Jersey will continue to be a backward state in this respect until it permits the people reasonable freedom in the selection, development and refinement of local government mechanisms.

Everyone recognizes the importance of doing everything possible to encourage citizens to take more active responsibility for their governments. One of the great and tested merits of home rule is the fact that it provides an opportunity and a convenient framework for the exercise of local initiative and self-help, governmentally speaking. The more responsible citizens are at the local level, the better will government be at all levels.

The New Jersey Legislature has in theory been fairly generous in the grant of municipal powers. (See the General Municipalities Act, sometimes known as the Home Rule Act.) Unfortunately,

however, the apparent intent of this act to grant broad home rule powers has been seriously impaired by strict construction which has forced municipal officials to keep running to the Legislature for clarification or extension of municipal powers. An over-all result is that the New Jersey laws concerning municipal government are an almost trackless maze. As local government faces the unknown future, such uncertainty in the municipal law may be dangerous and will certainly be a great nuisance, not only to the local governments themselves but also to the Legislature. The proposed draft attempts to meet this situation by reversing the present rule of construction which operates against any home rule power unless it is spelled out in the most specific terms.

Home rule will be good for the Legislature as well as for local governments. The home rule provision plus the proposed restriction on mandatory legislation will free the Legislature of the pressure to make decisions, for which it is not fitted, concerning primarily local matters and will enable it to give more concentrated attention to matters of truly statewide concern.

Explanation of General and Home Rule Provisions

These proposals are based primarily on the provisions of the "Model State Constitution" and the New York Home Rule Act. "The provisions of the "Model State Constitution" were prepared in the light of the pertinent constitutional and legal provisions, and the judicial interpretation thereof, in the states which now have home rule.¹

The proposed draft would, we believe, give New Jersey the shortest comprehensive and effectively self-executing home rule provision to be found in any state constitution. Brevity was sought not only to be consistent with the general style of the New Jersey Constitution, but also to avoid the restrictive details which almost always creep into long provisions concerning local government. The draft is intended to accomplish the following:

- (1) to give the people of any community an indefeasible opportunity to frame and adopt their own form of government;
- (2) to preserve the right of the Legislature by general law to set up any reasonable standards or specifications concerning the form, powers and conduct of local government in the interests of the State as a whole;
- (3) to provide a rule of construction designed to minimize the danger manifest in this and other states of frittering away home

¹ About two-fifths of the states have constitutional home rule provisions. In the following 17, at least, the provisions are effective: Arizona, California, Colorado, Maryland (for Baltimore only), Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Texas, Washington, Utah, West Virginia and Wisconsin. Pennsylvania has a constitutional home rule provision which is a dead letter because the legislature has so far failed to pass the necessary legislation to carry it out. The following states have constitutional provisions for county home rule: California, Maryland, Missouri, Oklahoma and Texas. New York provides so many options that they amount almost to the same thing as a provision for county home rule.

rule powers by excessively technical or narrow judicial construction;

(4) to leave the Legislature completely free to perform the creative function of providing any optional forms and procedure that it may see fit, not only for home rule but also for cooperation and reconstruction of local units;

(5) to guarantee that any home rule or optional charters that may be adopted will be adopted only by the consent of the people concerned.

Explanation of Mandatory Laws Provision

It is not necessary to demonstrate that mandatory legislation has for many years been a serious abuse in New Jersey: a gross violation of any sound home rule principles; a source of unnecessary public expenditures and consequently a serious limitation on the capacity of the people to support needed public services; and a cause of pressure upon the Legislature to play patronage politics at the expense not of the State, for which it must find the money, but of the local treasuries.

The mandatory laws as of 1941 were analyzed and classified in a 503-page publication of the New Jersey State Planning Board entitled *State of New Jersey Mandatory and Permissive Laws Affecting Counties and Municipalities*. The sheer bulk of this volume speaks for itself. Since that time the flood of mandatory legislation has continued unabated and there is every reason to believe that nothing short of constitutional limitation will ever be effective in curbing it.

The proposed home rule provisions should curtail mandatory legislation somewhat, especially as respects counties and municipalities adopting home rule charters. Additional safeguard is needed, however. The accompanying draft is an attempt to formulate such a safeguard.

Admittedly, it is difficult to prohibit the wrong kind of mandatory legislation without unduly restricting the power of the Legislature to set standards which the people of the whole State have a right to demand of all local governments. It would be foolish to contend in these days that the only people who have any interest in the quality of a county or municipal government are the people who live within the county or municipality. Counties and municipalities are the creatures of the State and the State cannot evade its responsibility for certain basic standards of organization and performance. The trouble with a very large amount of mandatory legislation is that it has the effect of undermining, not strengthening, valid standards.

It is believed that the proposed draft fully protects the power of the State in any situation in which the State has a legitimate interest. It is clear that with respect to any function in which the State has sufficient interest to contribute substantial support, *e.g.*, education,

the State would be allowed to regulate salaries, etc., as at present. The draft is worded also so as not to interfere with such general optional legislation as civil service, pension and governmental organization laws.

It must be admitted that the precise effect of this clause could not be determined until it had been in operation for some time. The danger is that it will mean too little, not too much; so there should be no hesitancy about adopting it as a statement of policy and for whatever legal effect it may have. There can be no doubt that at least it would prohibit certain very common types of mandatory legislation imposing serious monetary burdens on local governments toward which the State is not prepared to make reasonable or "substantial" contributions. The words, "substantial or commensurate," in the draft would rule out a mere token contribution by the State as an adequate basis for mandatory legislation and would indicate that the contribution must at least bear some reasonable relation to the size of the obligation imposed. It would be up to the Legislature and ultimately the courts to draw the line between substantial and insubstantial contributions. As the income tax laws and the other statutes indicate, however, this is a perfectly possible basis for a legal rule.

If the Legislature feels that the State has enough interest to justify it in making certain requirements concerning the number, emoluments, terms, tenure, or pension rights of particular classes of officers or employees, it should by all means support that interest by adequate state aid. This would recognize the principle that the body responsible for requiring a public expenditure should be held responsible for raising the necessary money. It has often been urged that the State should assume all or most of the cost of a number of county and some municipal services now supported wholly or largely by local funds. These include county expenditures for such essentially state functions as those performed by the county prosecutor, the courts, the county tax board, the county election system, etc., and county and municipal expenditures for certain health, welfare and other services which have important state-wide implications. If the proposed limitation on future mandatory laws had the effect of hastening such a reallocation of fiscal responsibilities, it would be fully justified on that score alone.

Since the draft as drawn would not affect existing mandatory laws, it would impose no sudden hardship on any person or agency relying on such laws. But by prohibiting future mandatory laws of the kinds indicated, or the reenactment of present mandatory laws which may subsequently be repealed or allowed to lapse, it should stop the growth and lead to the gradual reduction of the evil.

DRAFT OF LOCAL GOVERNMENT PROVISIONS

Sec.---*Organization*

Provision shall be made by general law for the incorporation and powers of counties, cities and other civil divisions; and for procedures, which may be optional, for the alteration of boundaries, the consolidation, the cooperation, the interchange of powers and the dissolution of such corporations.

Provision shall also be made by general law for optional plans of organization and government for counties, cities and other civil divisions, but no such law shall become operative in any place until approved by a majority of the qualified voters thereof voting thereon.

Sec.---*Home Rule*

Any county, city or other civil division may frame and by a majority of the qualified voters voting thereon adopt a charter to determine the form, organization, powers and manner of selecting the officers of its own government subject only to such definite standards or specific limitations or requirements as may be imposed by this Constitution or bylaws of statewide concern and uniform application.

Upon resolution adopted by vote of a majority of the governing body or upon submission of a petition signed by seven per cent of the qualified voters of any county, city or other civil division, the question, "Shall a commission be authorized to frame a charter for---?" shall, by act of the officer responsible for certifying public questions, be submitted to the people at the next general or other established election to occur not less than 60 days thereafter. The resolution of the governing body or the petition shall designate a procedure established by law which is to be followed, or may set forth another procedure. A petition setting forth a special procedure may include the names of the persons to be members of the commission so that a vote to authorize the commission is also a vote to elect the persons named. One or more procedures for the selection of a charter commission and the framing, publication and submission of a charter or of charter amendments shall be provided by law.

The affirmative vote of a majority of the qualified voters voting on the question of charter revision shall give the resolution or petition the status of a self-executing local law.

Specific or general amendments to a charter may be made in any manner provided by this Constitution or bylaw for the framing and adoption of such charter, or by any other method provided by law or by the charter.

The provisions of this Constitution and all laws concerning local government powers shall be liberally construed in favor of the right

of the people to a maximum of home rule compatible with the general welfare of the whole State.

Sec.—Mandatory Laws

The Legislature shall not hereafter enact any law prescribing or determining specific numbers, emoluments, or tenure or pension rights of particular classes of officers or employees of any county, municipality or other civil division of the State, whose salaries, pensions, and other expenses arising from their employment are paid from funds no substantial or commensurate part of which is furnished by the State; provided that this shall not prohibit prescription by state law of non-pecuniary obligations or standards of service or performance, or prohibit the application of any general act for optional plans of organization for local governments or for establishing a comprehensive civil service or pension system affecting all employees of a local government.

Clause on Limited Referendum

Any bill passed by one house of the Legislature may, by order of the Governor issued not less than 30 days nor more than 90 days after passage, be submitted to a referendum. Any such order may be withdrawn by the Governor or by resolution of the house of origin of the bill and shall be cancelled by enactment of the bill at any time more than 60 days before the scheduled vote by the people. If the bill be enacted less than 60 days before the vote, the referendum shall have no effect.

Any bill vetoed by the Governor which upon reconsideration fails to receive a two-thirds vote of all the members of each house may be ordered to a referendum by resolution approved by a majority of all the members of each house.

Any bill thus submitted to referendum shall be voted on at the next general election occurring at least 60 days after issuance of the order or resolution, and shall take effect as law if approved by a majority of the qualified voters voting thereon.

JOHN E. BEBOUT, *Chairman*
Research and Drafting Committee
New Jersey Committee for Constitutional Revision

July 2, 1947.

RECOMMENDATIONS OF
THE NEW JERSEY COMMITTEE FOR
CONSTITUTIONAL REVISION

*(Excerpted from the Committee's brochure "Constitutional
Changes," May 1947)*

* * * *

II. EFFECTIVE AND RESPONSIBLE LEGISLATIVE POWER

- A. Biennial elections in *odd* years, Senators to have four-year and Assemblymen two-year terms.
- B. Forbid legislation under suspension of rules, unless Governor certifies to an emergency. Bill must be on desk in printed form for three days. (Provision similar to New York's constitution.)
- C. Provide adequate investigatory power (as in Hendricksor Report.)¹
- D. Limit power of Legislature to enact:
 - (1) Tax exemption laws.
 - (2) Laws impairing the right of labor to organize and bargain collectively.
- E. Permit increase in legislators' salaries, but no Legislature to be *permitted* to raise its own salaries.
- F. Provide for legislative council.
- G. Forbid legislation prohibiting a candidate running on more than one party ticket.
- H. Forbid certain mandatory legislation for local spending, subject to exceptions in favor of general civil service and governmental organization acts.
- I. Clarify the tax clause by eliminating the "true value" requirements and recognizing classification of property.
- J. Eliminate words in Legislative Article which might be interpreted to prevent Assembly districts if desired in the future.
- K. Home rule: guarantee counties, cities and other local unit the right to choose their form of government by framing their own charters or choosing from among optional plans provided by the Legislature.
- L. Provide that any bill passed by one house, which is not passed by the other, may (a) upon order of the Governor and (b) with certain limitations, be submitted to the people for their adoption or rejection at the next general election.

NOTE: Several variations of this are possible. The Governor might be authorized to certify such a bill to the next Legislature.

¹ Report of the Commission on Revision of the New Jersey Constitution, 1942.

ture, and if it were adopted the second time in the first house, it might *then* be submitted to the people. Or, a bill passed by one house might be submitted to the people if after a recommendation by the Governor it is repassed by the same house in the same Legislature by a three-fifths or two-thirds vote.)

STATEMENT OF
THE NEW JERSEY CONFERENCE OF THE
METHODIST CHURCH

To the Members of the Constitutional Convention:

Ladies and gentlemen, fellow-citizens:

We appreciate and are deeply grateful for the granting of this time for us to present some matters on which we feel strongly and believe sincerely that laws must always be made to govern or even to outlaw those things which, because of the results accruing from their use, promote evil and trouble among our people and lead to disaster in many ways.

We come to you today to represent the Methodist people of South Jersey, grouped together in the way our church terms it as the New Jersey Conference of the Methodist Church. There are 317 churches, numbering 87,113 members, located between New Brunswick and Cape May City.

Drugs

We stand unalterably opposed to the use of and traffic in habit-forming drugs, and call for the strengthening of the arms of government, for better laws and their rigid enforcement against the whole traffic in narcotics.

Papers, Magazines, and Books

Papers, magazines and books which offend common decency are on the increase. Sex immorality, low moral standards and crime make such literature an ever-threatening menace. By precept and example the sacredness of the human body must be brought home to youth as they face life in a changing world.

Motion Pictures

Motion pictures have a great psychological and moral effect upon people. Pictures shown in New Jersey have sometimes had an immoral teaching. A Board of Governors for Motion Pictures should be set up for the State.

Sunday

Because of our situation along the Atlantic coast and the wonderful beaches we have, we are inclined in a greater degree to make Sunday fun-day. Hallam has said: "Holiday Sabbath is the ally of despotism, a Christian Sabbath is the Holy Day of freedom." Our elected officials take their oath of office with hand on the Bible. The witnesses in our courts are permitted to testify only after taking an oath to tell the whole truth while their hand rests on the Holy Bible. In that Bible God says: "Remember the Sabbath Day to keep it holy."

Thomas E. Dewey, Governor of New York, says: "For all today's confusion there is a remedy. It is an old, old remedy which the ministers of our great religions have preached to us for centuries. Did we but listen and carry out the teachings of that message literally our problems would be solved."

Fellow-citizens, build a Constitution for our State which will encourage the solving of our problems and the keeping of our freedom.

Gambling

Gambling is a moral disease which rots character and strikes at the vitals of a nation, and is really a virus, producing neurotic conditions nearly impossible to cure. Race track gambling in the State of New Jersey is multiplying this evil among us, causing broken homes, lost savings, hungry children, unpaid bills, industrial inefficiency, losses in legitimate business, a loosening of moral standards, an influx of undesirable persons, an increase of crime; undermining the virtues of thrift, industry, good sportsmanship and civic honor; promoting greed, improvidence, shiftlessness and political corruption. Gambling is a menace to business integrity; it always breeds crime and is destructive of the interests of good government. The State must rise up in order to end this rapidly growing evil.

Alcohol

Science has demonstrated that alcohol is a vicious drug. Accidents on the city streets testify to the liability which alcohol is on the paths of traffic. The state police head of Indiana said: "The individual who deliberately endangers the lives of others by drinking, then driving, constitutes the greatest menace to highway safety today." Jails and courts of law reveal what a factor alcohol is as a creature of crime. Insanity and vice declare how dangerous is the use of alcohol to human welfare. Reeling men and women—finished products of the open saloon—make the call for sobriety urgent.

The truth concerning the physical, moral, and social evils of alcohol has been clouded by the falsehoods and cleverness of writers of publicity in magazines and newspapers and on billboards until millions do not know or realize the danger in all forms of alcohol beverages.

The traffic never yet has adhered to the truth or law except under compulsion. It was said that the saloon would never be brought back, and it was brought back. No apology has ever been made for that deception. It was said that repeal would cut taxation, but taxation was not cut. It was promised that the traffic would be good, only to prove itself worse than it was remembered to have been. It presumes to take all the rights of democracy and assume none of its responsibilities. And a traffic that forgets promises for profits will never remember to keep promises for honor.

Repeal of national Prohibition has been a more ghastly failure than even its most consistent enemies predicted. The new saloon in its various guises is attended by shocking evils, unknown to the old saloon. One of the most tragic features of the whole debacle is that the toll of disaster falls most heavily upon youth.

The three states with the highest rates of chronic alcoholism for 1944 were California, Nevada and New Jersey, which had more than 1,000 chronic alcoholics per 100,000 of adult population.

Protection of its citizens is a function of the state. It is intolerable that any government, through participation in revenue, should be a party to a business that thrives upon physical, social, moral and spiritual decay of its people. We insist that intoxicating liquor cannot be legalized without sin. Wine through the centuries has not ceased to be a mocker, traitorously destroying individuals and blighting society. Adequate relief can only come through total abstinence for the individual and effective prohibition by the state.

The Twenty-First Amendment leaves each state free to enact any anti-liquor local option or prohibition legislation it may deem wise.

Divorce

"The excessive use of alcohol on the part of either the husband or the wife, or both, figures as a cause of divorce in 50 to 70 per cent of the cases," says Judge John A. Rawlins, judge of the divorce courts of Dallas, Texas. He continues: "In 28 per cent of the cases children are involved. Obviously all these adults cannot be classified as alcoholics. Probably thousands of them are 'moderate' drinkers. But they end up in the divorce court because of their drunkedness." J. Edgar Hoover says: "The gradual breakdown of the American home is beginning to be reflected in the national behavior pattern and is real cause for alarm." The only solution of the alcohol problem is no alcohol.

In Conclusion

The individual should be an asset to society, and not a liability. It is the business of government to make every individual an asset, and so we have public schools to educate him, health laws to keep him well, safety laws to protect him from accident. It is unthinkable to suppose that he should be so taken care of in these respects and at the same time allow forces to be licensed that can destroy his mind, his body and his soul. While the State is building bigger and better schools and hospitals it can also be building more and bigger prisons, reform schools, institutions for the feeble-minded, hospitals for the insane and alcoholics, and orphanages for neglected children—all brought on by one or all of the things mentioned above.

Much pressure has been brought no doubt on this Committee concerning the amount of revenue that comes to the State from licensing such evils. Surely the people who present these arguments

are either thoughtless, selfish or ignorant. They surely know that while revenue comes in, much goes out for increased costs for police and other law enforcement agencies and for state welfare agencies that become necessary. Also that this beautiful, industrial State should not have to be supported by revenue from debauching the people but should be able to support its government by legitimate means. Those institutions that are asking to have "bingo" licensed should examine themselves. Surely they should command the respect and loyalty of their friends and the community enough not to have to make evil-doers of the people to get their help and support. In our opinion no group should resort to such means. The selling of chances and all games of chance are the opening wedge to making habitual gamblers of our people. This is evident on every hand and should be stopped.

Therefore, we, the Methodist people of the New Jersey Conference, ask you to provide that the Constitution of the State of New Jersey—

1. Protects the sanctity of the Christian Sunday and does not allow it to be taken away by commercial interests.
2. Protects the welfare of the religious life which is the basis for highest and best in life for our people and which is the basis of democracy.
3. Protects the family life of the people of our State, especially considering the children.

Therefore we ask you to outlaw—

1. All forms of gambling from our State.
2. All licensed traffic in intoxicating liquor.
3. All forces that encroach on the observance of the Christian Sabbath as a day of worship and rest to our citizens.
4. All interests that tempt our people to live on a level lower than the best and the highest possible for them.

All of the statements which we have presented have been acted upon and accepted by our church at one time or another, so that we are not presenting to you our own opinions and beliefs alone but the united actions of the Methodist people from time to time. Much that we have presented has been taken from the Discipline, which is the book of regulations and laws for the 8½ million Methodists all over the world.

Again we express our appreciation of the time and attention you have given us and pray thoughtful and sincere consideration of these matters.

Signed by

A. C. BRADY

Superintendent of the New Brunswick District and representing the New Jersey Conference of the Methodist Church

LETTER OF THE NEW JERSEY
CONFERENCE OF THE METHODIST CHURCH,
BRIDGETON DISTRICT

128 N. Second Street
Millville, N. J.

June 26, 1947

Dr. Robert C. Clothier,
President of the New Jersey State
Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

Dear Dr. Clothier:

We, the four District Superintendents of the New Jersey Annual Conference of the Methodist Church, address the New Jersey State Constitutional Convention through you on the subject of gambling in its many forms. In our capacity as District Superintendents we represent the New Jersey Annual Conference and the 90,612 Methodists in the southern half of the State of New Jersey. The New Jersey Annual Conference has consistently opposed gambling in all its forms, ranging from pari-mutuel betting at horse race tracks to such games of chance as bingo, used at times to secure support for non-profit and benevolent institutions.

It is our conviction that gambling in any form is economically unsound, and detrimental to the moral life of all people. We believe that it creates an attitude of uncertainty rather than of assurance toward all life. We sincerely regret that pari-mutuel betting at horse race tracks has been legalized and urge that in the new State Constitution it may either be made illegal, or if that is found to be impossible that it be curbed to the last degree. We strongly urge that no further forms of gambling be permitted under any and all circumstances, no matter what institutions or persons may profit by its legalization.

Sincerely,

REV. A. C. BRADY
REV. W. W. PAYNE
REV. B. F. ALLGOOD
REV. I. S. PIMM

*The District Superintendents of the
New Jersey Annual Conference of
the Methodist Church*

RESOLUTION OF THE EXECUTIVE
COMMITTEE OF THE NEW JERSEY COUNCIL
OF CHURCHES

We sincerely urge that the present amended amendment in our State Constitution regarding gambling be eliminated from the new Constitution and that there be no article in the Constitution either prohibiting it or permitting it. The churches of this State have in no way retreated from their strong opposition to gambling in all forms and their insistence that the laws regarding it be strictly enforced. Furthermore, we believe that gambling is not only morally wrong but that it presents grave social and economic hazards to our community that this State should take cognizance of and provide effective remedies for by legislative means. However, we do not believe that the regulation and control of any specific evil such as gambling belongs in a Constitution which establishes basic principles and sets up the fundamental machinery of government. It is primarily a legislative and police function and it is into the hands of these agencies that adequate regulation and control must be placed.

Unanimously adopted
June 16, 1947

LETTER AND PROPOSALS OF
NEW JERSEY FEDERATION OF OFFICIAL
PLANNING BOARDS¹

June 20, 1947

Dear _____:

May we extend congratulations on your election to the Constitutional Convention and offer the cooperation of the New Jersey Federation of Official Planning Boards in the important task you are about to undertake.

We need hardly call your attention to the fact that the increasing complexity of modern civilization has necessitated broader functions for municipal governments than could have been foreseen by the framers of the Constitution of a century ago.

One of the most important of these enlarged duties of a municipality is to assure its own economically sound and physically efficient future development. This cannot be achieved without imposing some restrictions on the uses of private property; but it seems obvious that such restrictions should be limited to protecting property owners and the citizens as a whole against the ill-considered acts of minorities and haphazard development in general.

In addition to such safeguarding of future development, there is need for effective stimulation and aid to public agencies and private enterprise in getting rid of slums and blighted areas and in the improvement of housing and neighborhood conditions generally.

To these ends the New Jersey Federation of Official Planning Boards offers the proposed constitutional provisions herewith enclosed, in the hope that they may have your consideration and support. The suggested paragraphs would establish or improve power to direct future growth by municipal zoning; to protect the public heritage in places of scenic or historical value; to economically acquire and dispose of land to protect the public interest and investment in public improvements; to avoid excessive costs in the acquisition of land for future highways or other public purposes; to provide decent housing for low income families; to eliminate slums and control the spread of social and economic blight; and to furnish means whereby public agencies and private enterprise may act cooperatively for sound municipal development.

The constitution provisions herewith suggested will expand, clarify and redefine existing powers and provide a basis for the broader interpretations which modern conditions already require and future needs may demand. Their necessarily broad character

¹ Addressed to each delegate.

will, of course, be subsequently made specific in detail through the state acts necessary to transpose these powers to the municipal level of government, and, being permissive in nature, will be exercised under local initiative within the framework of our democratic form of government.

Probably you will be using for reference purposes the draft of a Revised Constitution for the State as submitted by the Legislature in 1944. If so, you will find that two of the proposed paragraphs sent herewith embody slight modifications of paragraphs 5 and 6 of Article III, Section VI of that document. The other four paragraphs are new and should be inserted, we believe, in the same section.

It is possible that some of the objectives sought by these paragraphs could be achieved by legislative acts without specific constitutional authorization; but we believe that it would be unwise to take the risk of omission when the objective can be assured by the brief provisions for which we are bespeaking your support.

Sincerely yours,

New Jersey Federation of
Official Planning Boards
SAMUEL RABKIN, *President*

PROPOSALS

(Recommended by the Committee for State Constitution Revision of the New Jersey Federation of Official Planning Boards, and approved by the Federation's Board of Directors, May 27, 1947)

ZONING

The Legislature may enact general laws under which municipalities, other than counties, may limit and restrict to specified districts and regulate therein (a) buildings and structures according to their construction and the nature and extent of their use, and (b) the nature and extent of the uses of land. Such general laws shall be deemed to be within the police power of the State.

PLANNING AND CONSERVATION

The natural beauty, historic associations, sightliness and physical good order of the State and its parts contribute to the general welfare and should be conserved and developed as a part of the patrimony of the people, and to that end private property shall be subject to reasonable regulation and control.

PROTECTION OF PUBLIC INTEREST IN PUBLIC PROPERTY

The State or any agency or political subdivision thereof which is empowered to take or otherwise acquire private property for any public purpose or public use may be authorized by law to take or

otherwise acquire the fee or any easements or rights therein, and may be authorized by law to take or otherwise acquire a fee or rights in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public interest. No such taking shall be without just compensation. When the fee is acquired for property in excess of that needed for such public purpose or public use, such excess may be sold or leased, with restrictions for the preservation and protection of the public interest.

ERECTION OF STRUCTURES IN THE PROPOSED LOCATION OF STREETS OR OTHER PUBLIC WAYS OR PLACES

The Legislature may authorize municipalities and counties to adopt an official map showing the location of the public streets and other public ways or places which it is intended to establish in the future, and no compensation shall be paid for any building or structure erected, after the adoption of such map, within the lines of any such street, way or place.

LOW-RENT HOUSING

The Legislature may provide, in such manner, by such means and upon such terms and conditions as it may prescribe, for low-rent housing for persons of low income as may be defined by law, and for recreational and other facilities incidental or appurtenant thereto.

SLUM AND BLIGHT ELIMINATION

The acquisition and assembly of real property or any interest therein, to facilitate the reclamation, development or redevelopment, in the public interest, of a wholly or partly substandard, deteriorated, abandoned or insanitary area, whether the uses to which such area is to be devoted be either public uses or private uses or both, is hereby declared to be for a public purpose. The Legislature shall make laws governing the acquisition, use and disposal of such property by an agency of the State or political subdivision thereof.

REDEVELOPMENT CORPORATIONS OR AUTHORITIES

The Legislature may authorize the organization of corporations or authorities to undertake the reclamation, development or redevelopment of wholly or partially substandard, abandoned, deteriorated or insanitary areas, and may authorize municipalities to exempt their improvements from taxation, in whole or in part, for a limited period of time, under conditions as to special public regulation to be specified by law or by contract between any such corporation or authority and the municipality; provided that, during the period of such tax exemption, the profits of any corporation and the dividends paid by it shall be limited by law.

VIEWS OF THE NEW JERSEY
STATE CHAMBER OF COMMERCE

NEW JERSEY STATE CHAMBER OF COMMERCE
605 Broad Street
Newark 2, New Jersey

July 17, 1947

* * * *

Committee on the Legislative

The Chamber endorses the proposal to increase the term of State Senators from three to four years, and the term of members of the General Assembly from one to two years.

The proposal that the present annual compensation of \$500 for State Senators and Assembly be increased to an appropriate figure is also endorsed.

The proposal for biennial rather than annual sessions of the Legislature and the recommendations for limiting legislative sessions to 90 days are opposed as impractical and unrealistic for our State.

RESOLUTION OF THE NEW JERSEY STATE ELKS ASSOCIATION

WHEREAS, the present Constitution of the State of New Jersey prohibits all forms of lotteries, except pari-mutuel betting; and

WHEREAS, religious, charitable, fraternal, and veteran organizations have as their objectives the alleviation of distress, to aid the indigent, to care for the sick and crippled, the rehabilitation of our unfortunate and underprivileged, and the betterment of their mental, physical and educational welfare; and

WHEREAS, for these worthy objectives, it is necessary to *raise funds* in furtherance thereof; and

WHEREAS, by virtue of the present inhibition imposed by the present Constitution of the State of New Jersey, the said objectives are greatly impaired,

NOW, THEREFORE, BE IT RESOLVED, that the New Jersey State Elks Association, in convention assembled, do hereby petition the delegates to the New Jersey Constitutional Convention to adopt in the revision of the Constitution to be submitted to the electorate at the next November general election, an Article, to be controlled by municipal local option, legalizing the raising of the necessary *funds*, by means of bazaars, bingos, card parties, etc., by the members of duly recognized and established religious, charitable, fraternal and veteran organizations hereinbefore mentioned; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Hon. Alfred E. Driscoll, Governor of New Jersey, and to the Chairman of the Constitutional Convention, and to each delegate to said Constitutional Convention.

DATED: June 13th, 1947

I hereby certify that the foregoing resolution is a true copy of the resolution adopted at the New Jersey State Elks Association in convention assembled at Asbury Park, on the 13th day of June, 1947.

NEW JERSEY STATE ELKS ASS'N.

HOWARD F. LEWIS, *Secretary*

RECOMMENDATIONS OF NEW JERSEY STATE FEDERATION OF LABOR

(Excerpts presented to the Committee on the Legislative)

* * * *

LEGISLATIVE

ARTICLE IV

1. *Terms of Legislators*

We recommend that Senators be granted a four-year term and Assemblymen a two-year term.

2. *Salary of Legislators*

The Constitution should not specify the salaries of the legislators. These salaries should be fixed from time to time by the members of the Legislature, to be effective during the next session of the Legislature.

3. *Legislative Lightning*

The practice of legislative lightning is one of the two most vicious, undemocratic and actually subversive practices that are presently extant in our government.

Legislative lightning is the practice of passing legislative bills under suspension of the rules, without reference to committee, without printing, and without giving an opportunity, not only to the public, but even to the members of the Legislature, to study or even read the bills. It is becoming more and more frequently invoked, to the detriment of the public and to the shame of the Legislature.

Article IV, Section IV, paragraph 6, was intended to prevent this practice, but it has been subverted and made meaningless. We therefore recommend an additional paragraph, reading as follows:

"All bills and joint resolutions shall be printed in the form in which they are finally adopted and shall be placed in such printed form on the desks of the members of the Legislature at least one week before the final adoption by either house of the Legislature."

4. *The Caucus System*

The present practice of the caucus system is the other of the two vicious, undemocratic and subversive practices above referred to.

Article IV, Section IV, paragraph 6, was intended to require public consideration of all legislation and to place all legislators on record by their yea and nay votes with respect to all legislation.

This also has been subverted; and the Legislature has adopted the practice of invisible, secret and irresponsible government through the caucus system. Members of the majority party meet in secret session, decide in advance upon their prospective action and refuse to permit the consideration of a bill on the floor of the respective

houses of the Legislature unless *a majority of the entire membership of the house*, in secret session, of the majority party alone, favors the bill in question. This reduces the members of the minority party to the position of a robot. It destroys representative or democratic government, creates a tight oligarchy, and effectively avoids the public responsibility to their constituents of the members of the majority party. It must be stopped.

We recommend the addition to the Legislative Article of a new paragraph to read as follows:

"All bills and joint resolutions shall be reported to the floor of the house of the Legislature in which they shall be considered, by the committee to which they shall be referred, within four weeks from the date of referral to such committee. All bills and joint resolutions which shall be favorably reported by committee shall be voted upon by a record vote of the house to which such report is made within one week after the receipt of the committee's report, if the house shall be in session; otherwise such vote shall take place at the next session of such house. All bills and joint resolutions which shall be unfavorably reported by committee shall, notwithstanding such report, be voted upon by a record vote of the house to which such report is made, provided that a motion for such consideration, made by a member of the house, is adopted by the vote of a majority of such house; the vote upon such motion shall be by yeas and nays and shall be entered on the journal; upon the adoption of such motion, such bills or joint resolutions shall be considered by such house and voted upon by a record vote, on the day of the adoption of such motion. Neither house of the Legislature shall adjourn *sine die* while any bills or joint resolutions remain in the consideration of any committee, while any bill or joint resolution which has been reported favorably by committee has not as yet been considered on final passage by either house, or while any bill or joint resolution which has been reported unfavorably by a committee, but has been ordered up for consideration by vote of a majority of the house, has not as yet been considered on final passage by either house."

We respectfully submit that the foregoing amendment to the Legislative Article would put an end to the vicious aspects of the caucus system and to the invisible government arising therefrom. It would, in addition, impose upon each legislator the duty to act publicly, and on the record of the journal in his respective house. Furthermore, we submit it would have the effect of discouraging the introduction of useless or worthless bills, since all bills introduced would be required to come to the floor, at least with a report from committee.

5. *State Support of a Free Educational System*

By the constitutional amendment of September, 1875, it was recognized that it is the State's responsibility to maintain our educational system. Our Constitution provides that, "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years."

The obvious intent of this constitutional provision was to require the maintenance and support of our school system through the use

of state revenues. This intent has been subverted. Instead, the Legislature has required the municipalities to support the school system by a highly devious and intricate system of bookkeeping entries.

In order to overcome this, we recommend that the last sentence of paragraph 6, of Section VII of Article IV, be amended to read as follows:

“The Legislature shall provide for, and defray the expense, through the use of state revenues, the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years.”

6. *A Free State University*

We submit that the failure of our State to provide a free state university for deserving but financially disabled students has seriously hampered our proper development. Many other states, far less industrialized and with substantially smaller per capita incomes, have realized the value of free higher education.

We therefore recommend the addition to Article IV, Section VII, paragraph 6, of a provision requiring the Legislature to provide and maintain a free institution of higher learning for the deserving students of the State.

7. *Assembly Districts*

The practice of electing Assemblymen at large in our more populous counties has resulted in the past and today in a decidedly unfair distribution of representation. Newark, for example, with approximately one-tenth of the State's population, is represented in the 1947 Assembly by only four Assemblymen, or one-fifteenth of the Assembly. The ratio has been even worse in prior years. With over 50 percent of the population of Essex County, Newark has a one-third representation in the Essex County Assembly delegation.

This inequity can be corrected by a provision for Assembly Districts. We respectfully recommend favorable consideration of a constitutional provision requiring the establishment of Assembly districts, rather than language which will merely permit their establishment by legislation. Legislative representation is a matter of constitutional determination, not legislative in character.

* * * *

CONSTITUTIONAL CHANGES
RECOMMENDED BY THE NEW JERSEY STATE
INDUSTRIAL UNION COUNCIL, CIO

* * * *

II. An effective and responsible legislative power.

A. Biennial elections in *odd* years, Senators to have four-year and Assemblymen two-year terms.

B. Forbid legislation under suspension of rules, unless Governor certifies to an emergency. Bill must be on desk in printed form for three days. (Provision similar to New York's Constitution)

C. Provide adequate investigatory power (as in Hendrickson Report).

D. Limit power of Legislature to enact:

(1) Tax exemption laws.

(2) Laws impairing the right of labor to organize and bargain collectively.

E. Permit increase in legislators' salaries, but no Legislature to be permitted to raise its own salaries.

F. Provide for Legislative Council.

G. Forbid legislation prohibiting a candidate running on more than one party ticket.

H. Forbid certain mandatory legislation for local spending, subject to exceptions in favor of general civil service and governmental reorganization acts.

I. Clarify the tax clause by eliminating "true value" requirement and recognizing classification of property.

J. Eliminate words in Legislative Article [which] might be interpreted to prevent Assembly districts if desired in the future.

K. Home rule: guarantee counties, cities and other local units the right to choose their form of government by framing their own charters or choosing from among optional plans provided by the Legislature.

L. Provide that any bill passed by one house, which is not passed by the other, may, (a) upon order of the Governor and (b) with certain limitations, be submitted to the people for their adoption or rejection at the next general election.

(NOTE: Several variations of this are possible. The Governor might be authorized to certify such a bill to the next Legislature and, if it were adopted a second time in the first house, it might then be submitted to the people. Or, a bill passed by one house might be submitted to the people if after a recommendation by the Governor, it is repassed by the same house in the same Legislature by a three-fifths or two-thirds vote.)

LETTER OF NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
Trenton Trust Building
Trenton, N. J.

July 8, 1947

Hon. Edward J. O'Mara
Chairman and Members of the Legislative
Committee of the Constitutional Convention
of New Jersey

The New Jersey State League of Municipalities has given careful consideration to the changes which should be made in the existing provisions of Article IV of the New Jersey State Constitution concerning the Legislative Department.

It recommends incorporation of the following provisions relating to the legislation affecting local government in that Article:

The natural right of the people to local self-government not contrary to this Constitution or state law shall not be impaired or denied.

The provisions of this Constitution and of state law concerning counties, cities, boroughs, towns, townships or villages, herein referred to as counties and municipalities, shall be broadly construed in their favor; the rights and powers of any county or municipality shall include not merely those expressly or incidently conferred, specifically enumerated, indispensable, essential, or necessarily implied, but also those rights and powers deemed by the governing body of the county or municipality to be reasonably convenient for their execution and those rights and powers not inconsistent with or prohibited by this Constitution or state law.

The Legislature shall enact general laws, which may provide optional plans of governmental organization, for the government of counties and municipalities and for the support of the same, and establishing standards of good government, provided that it shall not impose unreasonable burdens upon the people or in matters of public employment create any special privileges or preferences in favor of anyone or class to the prejudice of another or others.

The Legislature may enact a special or local law by a two-thirds vote of each House, to provide for any special, local or unusual situation concerning the property, affairs or government of any county or municipality. No such law shall be finally passed unless the county concerned shall by resolution of its board of freeholders, or

the municipality concerned shall by ordinance of its governing body, as the case may be, request such legislation.

Respectfully submitted,

New Jersey State League of Municipalities,

JAMES J. SMITH, *Executive Secretary*

MEMORANDUM OF NEW JERSEY TAXPAYERS ASSOCIATION

NEW JERSEY TAXPAYERS ASSOCIATION
417 Broad Street Bank Building
Trenton 8, N. J.

August 12, 1947

Memorandum to Delegates to the Constitutional Convention.

Subject: *Mandatory Legislation*

The proposal of the Committee on Legislative is lacking in at least one important respect—a gap which the Convention as a whole should repair if basic needs are to be met and the hopes of taxpayers for improvement and protection of their welfare through a revised fundamental law are to be realized.

This failure is embraced in the retreat by the Committee on Legislative from the problem of an effective constitutional restriction on legislative enactment of laws calling for mandatory or so-called “permissive” expenditures by local and county governments.

Reckless enactment of mandatory spending laws, through which the State Legislature directs local expenditures for local salaries and other local costs paid from local funds, has increasingly interfered with local government administration by the local officials whom taxpayers elect to safeguard their welfare in local matters.

Home rule is one of the bases of the American system of government, the cement that binds the states in the federation. The State, in gathering to itself increasing authority, is breaking down this system in precisely the same way that the Federal Government has infringed on the realm and authority of the states.

Hundreds of examples of mandatory spending law enactments have been added to the statute books during the past few years to raise salaries, provide tenure or create jobs for a variety of public employees in various municipal and county classifications. Without regard, in most cases, for the wishes of local taxpayers who pay the bills, the Legislature repeatedly has enacted bills providing salary increases or other benefits for scores of such public officials and employees.

Evils of mandatory laws have long been recognized. New Jersey's Local Government Board in its Third Annual Report pointed out that “some mandatory spending laws impose upon local governments burdens which they, otherwise, would not assume” and that such laws are “without regard to their needs and bear no true relationship to the question of necessity, efficiency or minimum standards of service,” and that many of these laws are “ill-advised, un-

necessary and were thrust upon local governments in the interest of special persons or groups."

The Legislative Committee originally approached the problem of mandatory laws with a declaration in its Tentative Report (Section VII, paragraph 11), as follows:

"No law shall be passed which shall make mandatory the appropriation or expenditure of any moneys by any county or by any municipal corporation formed for local government unless such law shall be applicable to all counties or to all such municipal corporations or unless the moneys so to be appropriated or expended shall be provided by the State, or the county or municipal corporation shall be reimbursed by the State for the appropriation or expenditure thereof."

The Committee's Final Report deleted any reference to mandatory legislation.

By the elimination of any controls over mandatory spending laws, paragraph 10 of Section VII, as reported in the original proposal of the Committee on Legislative, would not of itself cure the evil to which attention has been called, but would encourage permissive mandatory spending laws for salary increases favored by municipal or county governing bodies.

The New Jersey Taxpayers Association urges that the Constitutional Convention deal with this problem in behalf of the taxpayers of the State by including in the proposed revision of the State Constitution a paragraph as follows:

"The Legislature shall not enact laws affecting the employment, emoluments, term, tenure or pension rights of officers and employees of any political subdivision of the State whose salaries, pensions and other expenses arising from their employment are paid from other than State funds. Said officers and employees shall be certified upon the payrolls of said political subdivisions and officers and employees of the State shall be certified upon the State payroll."

We urge your attention to this subject as one of great importance.

Respectfully submitted,

A. F. METZ, *President*

NEW JERSEY TAXPAYERS ASSOCIATION

LETTER OF THOMAS D. TAGGART, JR., ESQ.

In Re:—The people have a right by constitutional restriction, to correct evil legislative practices that the courts cannot and the Legislature will not correct.

July 28, 1947

Hon. Edward O'Mara
Legislative Committee
Constitutional Convention
New Brunswick, New Jersey

My dear Senator:

Our State Government is the creature of the people. Its *modus operandi* springs from the Constitution of New Jersey. The people alone have the power to change the *modus operandi* of our State Government by repealing, altering, amending, revising or modifying the present State Constitution. By their vote in November, the people instructed the 1947 Legislature to convene a Constitutional Convention for the purpose of revising, modifying, altering and amending our present State Government through the adoption of a new Constitution. Constitutional delegates, elected as the agents of the people, are now moulding a new Constitution. The people have reposed a trust in their delegates that they present a Constitution for approval or rejection of the electorate as will improve the general welfare. A *carte blanche* authority was not given to the delegates to prepare a Constitution that would first serve the purposes of the members of the Legislature, the courts or the Governor, in contradiction to the best interest of the people.

The State Legislature as a political body, however, sovereign, is not yet sovereign over the people. Neither are its members, who as delegates to the Convention and members of the Legislative Committee, have recently caused to be published in the newspapers their draft of recommendations relating to the Legislative Branch of State Government.

While for some time there have been demands by some individuals for a reformation of the Executive Branch of State Government, and demands from some other individuals for reformation of the Judicial Branch of government, on the other hand, there has been state-wide criticism of the operation of the Legislature and an attendant universal recognition of an urgently needed reformation of the questionable practices carried on in the Legislature.

The draft of recommendations submitted by the Legislative Committee of the Convention ignore the justifiable demands that have been made for a number of years past, for a reformation of legisla-

tive practices and procedure. The best that can be said of the Committee Report is that the "elephant labored hard and came up with a mouse." A comparison of the Committee's recommendations with the present Constitution, discloses a few changes. Strange as it may seem, some of these changes are not designed to reform the present questionable practices but are directed towards improving the personal status of legislators, by giving legislators an unlimited power to increase their own salaries and extending the term of office of Assemblymen from one to two years and Senators from three to four years. Since the Legislature controls the limit on salaries of boards of freeholders, county judges, surrogates, county clerks, sheriffs, county treasurers, etc., there seems to be no logical reason why the people in their Constitution should not put a limit on the salaries of members of the Legislature. This right the people exercised when they adopted the 1844 Constitution but your Committee in their draft has denied the people this right. As your proposal now stands, the sky is the limit for legislators' salaries to keep on increasing whenever it suits their whim and pocketbooks.

It may be that one should not expect too much reformation sparking from one's self, and that we are expecting too much for the legislator members of the Legislative Committee to reform the questionable practices, well known to them. That is no reason to deny the right of reformation of these legislative practices to the people. *By the Committee's silence on these practices you do deny that right, because once the constitutional draft is accepted by the Convention, it is then too late for the people to insert any prohibitions in the Constitution against such practices.* You know the people will have to accept or reject the Convention's recommendations for a new Constitution, in its entirety. *The people will not be able to vote for the wheat and reject the sheaf [chaff]; that is what they have intrusted you to do for them in framing a new Constitution.* It may also be that the existing silence, as to the questionable practices by vocal political leaders and others *interested solely in judicial or executive reform*, is predicated upon the political expediency of not *antagonizing* members of the Legislature holding key Convention positions. The silence of these Convention leaders on badly needed legislative reformations may be to their own benefit, but it is certainly a disservice to the people.

Different individuals may see the same subject in a different light. *I hope not to be disrespectful to your Committee if, entertaining as I do, opinions of a character obviously opposite to the opinions of the legislator members of your Committee, I speak forth my sentiments freely and without reserve. This is no time for ceremony. The question of a new Constitution is of momentous importance to four million people of this State, who will be called upon in Novem-*

ber to decide whether to retain the present Constitution or to accept a new Constitution as drafted by the Convention.

I think you will agree that in proportion as this proposed structure of government gives force to public opinion, *it is essential that public opinion be informed of all of the advantages and disadvantages* contained in the constitutional drafts.

I believe that *since the legislators are the agents of the people*, in relation to the Legislative Branch of government, *that the people do have an inherent right, through their Constitution, to place any restriction or prohibition* they desire upon the *conduct* of the Legislature, which will tend to strengthen the public welfare and at the same time *protect the people from the artifices* of those members who do violate their public trust and use their positions in the Legislature for wrongful or evil purposes. Otherwise, *we could very well retrograde to a government by power of men* in place of a State Government by laws that restrict the power of political legislators over the people. After all, the purpose of a new Constitution is *to give opportunity of expression to the people* to grant such powers to the Legislative, Judicial and Executive Branches as the people think proper, and at same time to deny, restrict or prohibit to the Executive, Legislative and Judicial Branches of State Government, as the people think proper. By what reason can members of the Legislature, sitting in the Convention, deny an opportunity to the people to place such restrictions in the Constitution as [are] designed to prevent a repetition, in the future, of well known, questionable legislative practices. *Is not legislative conduct of the past and present the best guide* as to the conduct of the Legislature *in the future?* Are not all the judicial and executive experiences of the past now being used at the Convention as a yardstick for changes suggested in the Executive and Judicial Branches? Then why has this yardstick of past experience been overlooked, discarded or rejected as to the Legislative Branch?

Doubtless, there are some legislator delegates who may refuse to be a party to any constitutional restrictions upon these questionable practices of the Legislature; if so, they will be violating their trusts as agents of the people. They will be placing their own personal wishes above the generalized demand of the people for legislative reformation by constitutional restrictions. No legislator has any right to use his position, in the Convention, *to foreclose* the people from an opportunity to prevent, by constitutional restrictions, a repetition of these universally condemned practices in the future.

May I relate to you, and through you to your Committee and then on to the Convention, *some universally recognized* reformations of legislative practices?

(1) VOTING PROCEDURE IN HOUSE OF ASSEMBLY—In the Senate a

member is not marked as voting on a bill unless he, by his own voice, indicates "yes" or "no." Without any good reason this procedure is not followed in the Assembly, where a member is *automatically marked* in the affirmative if he is in his seat, and does not, by his own voice, vote in the negative. *It is through this procedure that many bad bills are slipped through the House of Assembly.* Such a practice is not only very unfair to a member of the House who might be studying other legislation or engrossed in conversation while the roll is being called, but *also very detrimental and dangerous to the public welfare.* This Assembly procedure leaves the door wide open for such questionable practices as most recently happened in the closing days of the 1947 Assembly, when five members of the Assembly were marked, by the Clerk, as voting for a bill where in fact two of these members were not even in the House at the time, and three others actually opposed to the bill were marked in the affirmative. This particular incident became so scandalous that the Governor refused to even consider signing the bill until it was called back from the Senate to the House, and re-voted. Time and time again members of House have found themselves embarrassed when the roll call showed them as voting for a bill which they were actually opposed to. The Legislature has passed laws to prevent incorrect and fraudulent vote counting in elections. It has even gone so far as to saddle some counties with a large cost of getting voting machines in order to assure an honest count. But never has the Legislature lifted a finger, in spite of terrific criticism, to prevent the improper or fraudulent counting and recording of votes in the House of Assembly. *If the House of Assembly condones this practice, the people of the State do not.* The Governor cannot correct questionable legislative practices and neither can the courts, as the Legislature is supreme in conduct of its own business and can *only* be limited by constitutional restrictions of the people. The Convention is duty-bound to afford this opportunity to the people through a proper provision in the proposed Constitution.

(2) ACCEPTANCE OF REWARDS BY LEGISLATORS PROHIBITED—An unsavory practice has grown up in the Legislature by which some attorney legislators have been accepting a *retaining* fee for alleged legal service from special interests; then we have seen these legislators *operate as super lobbyists* in the party caucus, on the committees, and on the floor of the Senate, sponsoring legislation or corraling votes for or against legislation, according to the position their clients take upon the matters in question, such activities being against the public welfare. The recent exposure of Senator Farley's office receiving a \$20,000 retaining fee from a race track and then sponsoring and huckstering around for votes for a bill by which a race track obtained \$300,000 to the loss of the people, is a notorious

legislative scandal, so recent that it must be fresh in your mind. True, the law makes such conduct a crime, but the Governor said it was a legislative matter and has done nothing about it. The Legislature itself has done nothing about it. No criminal nor investigatory proceedings have been instituted by any of the duly constituted prosecuting authorities. Senator Farley profited in violation of his oath and the criminal laws (*New Jersey Revised Statutes* 2:144-2); the race track is in \$300,000; and the general public has been left aghast by the political expediencies that have hushed up such reprehensible conduct. The agencies of the people having failed to act, the people themselves can do nothing about it. But they have the right to have an opportunity to write into a new Constitution such prohibitions that will forever break up such conduct. As agents of the people, the delegates to the Convention should insert a provision in Constitution draft that would result in the expulsion from the Legislature and the forfeiture of the legislative seat of any legislator who shall in the future "directly or indirectly accept any money, legal fee or other valuable thing or any promissory note, bill of exchange, check or other evidence of debt, or anything, as a bribe, present, remuneration, or reward for his obtaining, procuring or influencing the opinion, behavior, vote, or absention of voting of himself or any other member of the Legislature, upon any bill, resolution, election, appointment or other proceeding pending before the Legislature, or before either house or before both houses in joint meeting."

(3) LOBBYING—not by private citizens or representatives of groups who go to Legislature to present their cause in an open and orderly fashion, but by paid agents and others representing powerful special moneyed interests, has caused one scandal after another. The most recent was the stealing of a bill from the floor of the Senate by a well-known character and lobbyist. This professional, commercialized lobbying is against the public welfare. The Legislature never having seen fit to break it up or even do anything about it, the people will do so by constitutional provision, if not foreclosed of the opportunity by delegates from so doing. A requirement for registration of all lobbyists, and a prohibition against any and all lobbyists appearing on the floor of the Legislature, in its offices and its committee rooms, should be inserted into the Constitution if the people are to be protected in future from this sordid lobby racket.

(4) KILLING GOOD LEGISLATION IN CAUCUS AND COMMITTEES—Too much bad legislation is put over *via* vote bartering in caucus behind closed doors; too much good legislation is bottled up in committees by committee chairmen when members refuse to go along with committee chairmen on the pet legislation of a chairman or his political friends in the Legislature. The new Constitution should contain

a provision requiring all bills be brought out for a vote within a specified time. Such a constitutional provision will break up a very bad practice where committee chairmen threaten other members that their bills will not be released unless other members vote for bills of the chairman and his confidants. It will then become possible for good legislation to be enacted on its merits. Such a provision will also break up the practice of introducing "strike bills," bills whose only purpose is to intimidate some public official, individual or group and bills which the sponsor knows he can keep in committee and not bring up for a vote while in the meantime such sponsor keeps the object of his intimidation in suspense, as the sponsor puts the pressure on the object to accomplish the purposes of the sponsor.

(5) ALL DUAL OFFICE HOLDING BY LEGISLATORS SHOULD BE PROHIBITED—The present legislative draft only prohibits a legislator from holding a federal or state position at one and the same time with his position in the Legislature. This should be extended to prohibit the holding of county and municipal positions. With the increase of salaries of legislators, there can no longer be any excuse for any type of dual office-holding by a legislator. Municipal and county officials should be prohibited from holding other municipal or county positions. A member of the Legislature can use his position in the Legislature to increase both his power and his salary in a municipal or county office; he can use the power of his legislative office to keep him perpetually in his municipal or state office, and further, since no man can serve two masters well and do justice to both at one and the same time, the dual office-holding shall be prohibited by constitutional provision. The same arguments are applicable to municipal officials holding two jobs such as in Atlantic City, where a city commissioner is also judge of the police court. His conduct has been so autocratic and questionable by reason of the combined powers of two offices that an extensive grand jury investigation at the instance of Supreme Court Justice Eastwood is now being conducted of this individual. Dual office-holding has become a political technique whereby, through the combined powers of two offices, a dual job holder is able to perpetually entrench himself in both offices, which is contrary to democratic principles.

You may say that these aforesaid matters should be left for legislative corrections and rules, but such excuse is meaningless in light of the past "do nothing" attitude by the Legislature about these practices. The courts cannot set the legislative procedures nor can they correct legislative conduct; that is a matter for the Legislature. It can also be controlled by the people, but *only* through constitutional prohibitions and restrictions upon the Legislature. The Legislature can make rules and regulations, and pass laws today, but they can turn around and repeal or alter them tomorrow. This

is not so of constitutional restrictions, for once made by the people, they are beyond the power of the Legislature to correct and can only be changed by the people. The people should not be denied the opportunity of constitutional restrictions, to correct these conditions which the Legislature has wilfully refused to correct. The people should not be denied this, their only opportunity, to bring about legislative reforms, when the Legislature has refused to reform itself.

Trusting there will be a revision of the draft of Legislative Article in light of these suggestions, I am

Respectfully,

THOMAS D. TAGGART, JR.

Member, House of Assembly, 1933-37, inc.

Member, Senate, 1938-39-40

Mayor of Atlantic City, 1940-44

