

State of New Jersey
**CONSTITUTIONAL
CONVENTION**
OF
1947

HELD AT
RUTGERS UNIVERSITY
The State University of New Jersey
NEW BRUNSWICK, NEW JERSEY



Volume V

PROPERTY OF
NEW JERSEY STATE LIBRARY

186 W. STATE ST. PO BOX 520
TRENTON, NJ 08625-0520

COMMITTEE ON EXECUTIVE,
MILITIA AND CIVIL OFFICERS

COMMITTEE ON
TAXATION AND FINANCE

COMMITTEE ON SUBMISSION
AND ADDRESS TO THE PEOPLE

RECORD

INDEX TO VOLUMES III, IV and V



JERSEY PRINTING CO., INC., BAYONNE, NEW JERSEY

PREFACE

THIS VOLUME completes the five-volume Proceedings of the Constitutional Convention of 1947. It contains the proceedings before the Committee on Executive, Militia and Civil Officers, the Committee on Taxation and Finance, and the Committee on Submission and Address to the People. It also includes appendix material for the first two Committees, covering supplemental material submitted by individuals and groups and not elsewhere reproduced in the Proceedings.

The Committee on Executive, Militia and Civil Officers consisted of Charles K. Barton, Mrs. Jane E. Barus, Frank H. Eggers, Frank S. Farley, Milton A. Feller, Lewis G. Hansen, Spencer Miller, Jr., J. Spencer Smith, David Van Alstyne, Jr., George H. Walton and David Young, 3d. The organization meeting of the Committee was held on June 18, 1947, at which time David Van Alstyne, Jr. was elected Chairman; Milton A. Feller, Vice-Chairman; and Mrs. Jane E. Barus, Secretary. The editors are grateful to Mrs. Barus for maintaining a complete set of minutes of the executive sessions of the Committee which were unhesitatingly made available by Chairman Van Alstyne. It has thus been made possible to present a complete record of the work of this very important Committee.

The Committee on Executive, Militia and Civil Officers met on 14 different Convention days. A total of 27 sessions, either morning or afternoon, were held, of which 13 were executive sessions and 14 open to the public. Every interested person or group was given an opportunity to present his or its views and any material pertaining to the work of the Committee.

The Committee on Taxation and Finance consisted of Allan R. Cullimore, William J. Dwyer, Sigurd A. Emerson, Milton C. Lightner, John Milton, Frank J. Murray, John J. Rafferty, William T. Read, Mrs. Ruth C. Streeter, Clyde W. Struble and Elmer H. Wene. The organization meeting of the Committee was held on June 18, 1947. William T. Read was elected Chair-

man; Frank J. Murray, Vice-Chairman and John J. Rafferty, Secretary.

The Committee held open meetings on nine Convention days. Unfortunately, no record was kept of its executive sessions, so that they are not available for reproduction. As in the case of other Committees, invitations were sent to interested persons and groups to attend and present their views and memoranda in an area which was controversial and critical.

The Committee on Submission and Address to the People consisted of Anthony J. Cafiero, Francis V. D. Lloyd, John L. Montgomery, J. Francis Moroney, Francis D. Murphy, Winston Paul and Wilbour E. Saunders. There is no formal record of the organization of this Committee, but Wilbour E. Saunders was elected Chairman; Anthony J. Cafiero, Vice-Chairman and J. Francis Moroney, Secretary. The Committee met from time to time as the work of the Convention progressed. Formal minutes were recorded of three sessions because of the important nature of the subject matter under discussion.

There is also included in this volume an Index to Volumes III, IV and V which covers the Committee proceedings. This Index, together with the Index to Volumes I and II, appearing at the close of Volume II, constitute the complete Index for these Proceedings.

The volume concludes with a statement of policy by the Committee on Rules, Organization and Business Affairs, under whose supervision the work of editing and publishing these Proceedings has been carried out. The Committee organized on June 18, 1947 and consisted of Arthur R. Gemberling, Sr., Chairman; Winston Paul, Vice-Chairman; Mrs. Marion Constantine, Secretary; Joseph W. Cowgill, William A. Dwyer, Mrs. Pauline H. Peterson, and H. Rivington Pyne. To all the Committee members we express grateful thanks for their helpful and understanding cooperation in carrying out the publication of these Proceedings.

SIDNEY GOLDMANN
HERMAN CRYSTAL
Editors

March 1953

TABLE OF CONTENTS

VOLUME V

	PAGE
Preface	iii

PART I: COMMITTEE ON THE EXECUTIVE, MILITIA AND CIVIL OFFICERS

Meeting, June, 18, 1947	1
Meeting, June 24, 1947 (morning session)	3
Meeting, June 24, 1947 (afternoon session)	29
Meeting, June 25, 1947 (executive session)	59
Meeting, June 25, 1947 (morning session)	62
Meeting, June 25, 1947 (afternoon session)	74
Meeting, June 26, 1947 (morning session)	88
Meeting, June 26, 1947 (executive session)	138
Meeting, July 1, 1947 (executive session, morning)	141
Meeting, July 1, 1947 (morning session)	142
Meeting, July 1, 1947 (executive session, afternoon)	176
Meeting, July 1, 1947 (afternoon session)	177
Meeting, July 2, 1947 (morning session)	193
Meeting, July 8, 1947 (morning session)	204
Meeting, July 8, 1947 (executive session, morning)	233
Meeting, July 8, 1947 (executive session, afternoon)	236
Meeting, July 8, 1947 (afternoon session)	241
Meeting, July 10, 1947 (morning session)	269
Meeting, July 10, 1947 (afternoon session)	321
Meeting, July 29, 1947 (morning session)	337
Meeting, July 29, 1947 (afternoon session)	365
Meeting, July 30, 1947 (executive session, morning)	403
Meeting, July 30, 1947 (executive session, afternoon)	405
Meeting, July 31, 1947 (executive session)	411
Meeting, August 5, 1947 (executive session)	413
Meeting, August 12, 1947 (executive session)	415
Meeting, September 8, 1947 (executive session)	417

Appendix:

Report of the Commission on Revision of the New Jersey Con- stitution	421
Proposed Revised Constitution of 1944	434
Letter of American Veterans Committee, Town of Montclair Chapter	442

	PAGE
Some Constitutional Changes Recommended by New Jersey Committee for Constitutional Revision, Approved by State C.I.O. Council Executive Board April 5, 1947	444
Letter of Consumers League of New Jersey	445
Memorandum of Herman Crystal, Esq.	447
Brief of Former Governor Walter E. Edge	448
Letter from Former Governor Walter E. Edge on Succession....	457
Memorandum of Former Governor Charles Edison	459
Letters of Leslie H. Jamouneau	462
Letter of Sol Kantor	474
Recommendations of the League of Women Voters of New Jersey	475
Statement of the League of Women Voters of New Jersey on Civil Service	481
Brief of the New Jersey Agricultural Society	483
Statement of Various Farm Organizations on Continuing the Present Method of Appointment of Farmers to the State Board of Agriculture	488
Memorandum of New Jersey Farm Bureau and New Jersey State Grange Relating to Independence of the Department of Agriculture	491
Resolution of the New Jersey Association of Chosen Freeholders	492
Recommendations of the New Jersey Chamber of Commerce...	493
Memorandum in Behalf of the New Jersey Civil Service Asso- ciation, Inc.	494
Recommendations of New Jersey Committee for Constitutional Revision	498
Explanation and Draft of Proposals by the New Jersey Com- mittee for Constitutional Revision on the Executive Article..	500
Proposal of New Jersey Council, State County and Municipal Workers	515
Letter of New Jersey Manufacturers Association	516
Recommendations of the New Jersey State Federation of Labor	518
Letter of the New Jersey State Firemen's Mutual Benevolent Association	519
Proposal of New Jersey State Firemen's Mutual Benevolent Association	520
Brief of the New Jersey State Motor Vehicle Agents Association	521
Recommendations of the New Jersey Taxpayers Association...	525
Letter of Frederick A. Potter	526
Letter of I. Grant Scott, Clerk in Chancery	527
Letters of Frank H. Sommer, Counsel to the Board of Public Utility Commissioners	529

PART II: COMMITTEE ON TAXATION AND FINANCE

Meeting, June 24, 1947	535
Meeting, July 1, 1947 (morning session)	545
Meeting, July 1, 1947 (afternoon session)	566
Meeting, July 8, 1947 (morning session)	584
Meeting, July 8, 1947 (afternoon session)	599
Meeting, July 9, 1947	610
Meeting, July 10, 1947 (morning session)	646
Meeting, July 10, 1947 (afternoon session)	681
Meeting, July 15, 1947 (morning session)	723
Meeting, July 15, 1947 (afternoon session)	750
Meeting, July 29, 1947	770
Meeting, August 5, 1947	779

Appendix:

Report of the Commission on Revision of the New Jersey Constitution	827
Proposed Revised Constitution of 1944	830
Report of the Proceedings Before the Committee on Taxation and Finance of June 24, 1947	832
Letter of Colonia Post 248, the American Legion	835
Resolution of American Veterans of World War II, Department of New Jersey	836
Memorandum of Associated Railroads of New Jersey	837
Letter of R. Robinson Chance, Esq.	844
Resolution of the City Council of Elizabeth, New Jersey	847
Letter of George J. Hart, Esq.	848
Resolution of Jewish War Veterans of the United States, New Jersey State Department	849
Recommendations of the League of Women Voters of New Jersey	850
Statement of the League of Women Voters of New Jersey	851
Memorandum of Aaron K. Neeld, Deputy Director Division of Taxation, Department of Taxation and Finance	853
Proposal of New Jersey Association of County Tax Board Commissioners and Secretaries	856
Statement of New Jersey Association of Real Estate Boards.	859
Recommendations of the New Jersey Committee for Constitutional Revision	862
Memorandum of New Jersey Council of Churches	863
Letter of State of New Jersey Federation of American Patriotic Societies	866
Brief of New Jersey Highway Users Conference	869

	PAGE
Recommendations of the New Jersey State Chamber of Commerce	892
Recommendations of the New Jersey State Federation of Labor	893
Recommendations of the New Jersey State Industrial Union Council, C.I.O.	894
Memorandum of New Jersey Taxpayers Association	895
A 20th Century State with a 19th Century Tax System	898

PART III: COMMITTEE ON SUBMISSION AND ADDRESS
TO THE PEOPLE

Meeting, August 11, 1947	911
Meeting, August 13, 1947	932
Meeting, August 26, 1947	957
Index to Volumes III, IV and V	997
Statement of Committee on Rules, Organization and Business Affairs	1067

COMMITTEE
ON
THE EXECUTIVE,
MILITIA
AND
CIVIL OFFICERS

RECORD
OF
PROCEEDINGS

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, June 18, 1947

(Executive session)

*(Minutes)*¹

The first meeting of the Committee was held in Room 203, Rutgers University Gymnasium, New Brunswick, New Jersey, on Wednesday, June 18, 1947, at 4:00 P. M.

Senator David Van Alstyne, Jr., Chairman, presided. Others present were: Mrs. Barus, Mayor Eggers, Senator Farley, Judge Feller (Vice-Chairman), Judge Hansen, Commissioner Miller, Commissioner Smith, Colonel Walton and Senator Young.

Election of Secretary:

Mrs. Barus was elected Secretary of the Committee, upon motion duly made and seconded.

Election of Technician:

The Chairman suggested that Mr. William Miller, of the Princeton Surveys, be named technician and draftsman for the Committee, and that the Committee on Rules, Organization and Business Affairs be requested to assign him to this position. Upon motion by Judge Feller, duly seconded, this suggestion was adopted. The Chairman stated that he would convey this request verbally to Mr. Gemberling, Chairman of the Rules Committee, immediately upon the adjournment of the meeting, and directed the Secretary to confirm the request in writing.

Discussion of Procedure:

Judge Feller moved that the Committee seek the advice of the Governor of the State, and that of the former Governors, as a first step. The motion was seconded and carried. It was decided to set Tuesday, June 24, immediately after the general Convention adjourns, and Wednesday, June 25, for these interviews, and to give Governor Driscoll the first choice of times. It was agreed that the Chairman should get in touch with Governors Driscoll and Edge; that Commissioner Smith should reach Governors Moore, Larson, Fielder and Hoffman, and that Mrs. Barus should reach Governor Edison.

Mayor Eggers moved that if Governor Edge is unable to appear

¹ Minutes of executive sessions were prepared by Mrs. Jane E. Barus, member and Secretary of the Committee.

before the Committee, his recent letter to all delegates should be made a part of the record of the Committee's deliberations. Motion seconded and carried.

Commissioner Smith suggested that state department heads, as well as the Governors, should be asked to appear before the Committee, since they are the men who actually carry on the administrative work of the State. After discussion it was decided not to do this, since (1) there are two commissioners on the Committee; (2) there are a great many department heads, and to hear them all would consume a great deal of time, while to choose among them might cause ill-feeling.

Public Hearings:

Upon motion by Senator Farley, duly seconded, it was voted to hold public hearings at an early date, so that the people would feel that the Committee would listen to their ideas before anything definite was drafted; and again after the Committee had written its first draft of the Articles. The date of the first hearing was set for Thursday, June 26, at 10:00 A. M. Persons wishing to be heard will be allowed ten minutes to speak, and will be informed that it would facilitate the work of the Committee if they also submitted written statements. The Chairman called attention to the fact that this did not preclude further statements being sent to the Convention up to the deadline date of July 7, as agreed on at the first general session.

It was decided to confine the first hearing to the Executive Article, and to hear suggestions on the Militia and on Civil Officers at the second hearing, which was set for Tuesday, July 1, at 11:00 A. M., with any statements about the Executive Article for which there was not time at the first hearing.

Commissioner Smith was requested by the Chairman to clear these dates with the other Convention Committees, in order to avoid conflicts.

Mayor Eggers moved that the Committee take as a working basis the provisions of the present Constitution, since the Convention is to revise it. The motion was seconded and carried.

The Chairman pointed out, however, that a great deal of work had been done on the 1942 and 1944 drafts, and that there was no reason why the Committee should not make use of the material contained in those drafts. Mayor Eggers also moved that the Committee should meet when called by the Chairman. The motion was seconded and carried.

The press was then called in, and the Committee's plans were announced.

The meeting adjourned upon motion made and seconded.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, June 24, 1947

(Morning session)

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

PRESENT: Barton, Barus, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: The meeting is called to order.

Governor Larson, it is exceedingly gracious of you to come and sit with us to discuss this problem. With the permission of the other members of the Committee, I would like to turn the meeting over to you and ask you to tell the Committee in what way you feel the Executive Article of the present Constitution should be changed.

FORMER GOVERNOR MORGAN F. LARSON: Senator, I have no brief to submit, but I have made a few notes I will refer to so that my remarks may be given in an orderly fashion.

Although this is not a part of the Executive Section, I believe the Legislature should meet every two years, and that the members of the Assembly should be elected for a two-year term and the members of the Senate for a four-year term.

I believe the Governor should have the right to succeed himself, if elected, for one additional term; that is, that his tenure be limited to two terms, the term of the Governor to be four years.

Regarding the veto power, I made a little calculation here—the difference between two-thirds and three-fifths. If it takes a two-thirds vote of the Legislature to pass a bill over the Governor's veto, that means 40 votes in the House, and only 36 for a three-fifths vote. In the Senate, for two-thirds it would be 14 votes, and for three-fifths it would be 13, just one less, because three-fifths would be 12 and a fraction and that would have to be 13. I think perhaps you would have more people in favor of the three-fifths provision than you would the two-thirds. Some people might object to increasing the number of votes to pass a bill over the Governor's veto because we have for so many years had the provision that it could be overridden by a bare majority.

I believe the judges should be appointed by the Governor.

Regarding succession to the Governorship, I always liked the

present system where the President of the Senate succeeds the Governor. We don't have a Lieutenant-Governor. However, if the Convention adopts a provision to have a Lieutenant-Governor he would, of course, succeed.

Without going into too much detail, I might say this: I don't want to tell the members of the Convention what to do or give them a whole lot of advice. However, I have had a lot of experience in reading constitutions and I would suggest that when the Constitution for the State of New Jersey is written it have fewer commas and more periods. Then it would be easier to understand. Too long sentences sometimes become ambiguous, and that is where the trouble has been. At least, that has been my experience.

Now, Senator, if there is anything else you would like to have from me, or if there are any questions you would like to ask, I would be glad to have them. But that is briefly and to the point what I have to offer, and I think I have covered the ground pretty thoroughly as to my views in regard to the Executive Department.

CHAIRMAN: Does any delegate have any questions to ask?

MR. LEWIS G. HANSEN: Governor, what was your point about succession? You said you favored only two terms, but not in succession—is that what you said?

GOVERNOR LARSON: No, I said he should have the right to succeed himself, but only for one additional term—that is, making two terms altogether, or eight years.

MR. FRANK S. FARLEY: Governor, relative to the right of appointment by the Governor, do you believe in confirmation by the Senate?

GOVERNOR LARSON: Yes. I am glad you brought that up.

MR. FARLEY: What is your view regarding the Court of Pardons—the Governor's power in the Court of Pardons?

GOVERNOR LARSON: I always liked the system we had regarding the Court of Pardons, rather than having it put right up to the Governor. I think it would often be an additional burden on the Governor to have him have the entire say as to pardons. I always found it useful to have the Court of Pardons consult with the Governor.

MR. FARLEY: In other words, you think the present system is adequate.

GOVERNOR LARSON: Of course, there would probably be some changes in membership. As it is now, you have the Court of Pardons. . . .

MR. FARLEY: We want to get the benefit of your viewpoint by virtue of your experience relative to the Governor's power, etc.

GOVERNOR LARSON: I would be in favor of the Court of Pardons.

MRS. JANE E. BARUS: I would like Governor Larson to comment more fully on the question of the Lieutenant-Governor. You indicated you would not object to it too much, although you are in favor of the present order of succession.

GOVERNOR LARSON: I am in favor of the present order of succession if they do not have a Lieutenant-Governor. Now, I think our State is getting to be a large State and it may be time to have a Lieutenant-Governor to step in in case the Governor resigns or is incapacitated. However, my experience as a member of the Senate and also as Governor has been that the present system always worked out very well. Although we had some resignations, we did not have any deaths in the Governor's office during my time.

MRS. BARUS: The main argument for the Lieutenant-Governor is, after all, that the President of the Senate or the Speaker of the Assembly is elected only by the voters of one county, and if there were another state officer chosen by the people as a whole, it would be more appropriate.

GOVERNOR LARSON: That has always been the argument for a Lieutenant-Governor, and I think it is probably a valid argument from that viewpoint. I might say I don't think anyone should succeed to the Governorship unless he has been elected by the people. I don't think we should take some secretary or department head. You might get a very good man that way, but I think it should be a man who has submitted himself to the approval of the people. That would perhaps be a good argument for a Lieutenant-Governor, because he would be a man who is elected by all the people in the State.

CHAIRMAN: I would like to ask a question. Assuming you elected this Lieutenant-Governor, what would he be doing when he was not Governor? A Lieutenant-Governor would make a radical change. In states where they have a Lieutenant-Governor, he usually presides over the Senate.

MR. CHARLES K. BARTON: With biennial sessions, what would the Lieutenant-Governor really do? Senator Van Alstyne took the question out of my mouth. What would be his function?

GOVERNOR LARSON: He would not be doing very much, it is true. I am not so much in favor of a Lieutenant-Governor for that very reason. I think the President of the Senate should act as Governor during the absence of the Governor and, of course, according to the present Constitution, should succeed the Governor in case he died or resigned or became incapacitated, up until the end of his term; and the man who was then elected President of the Senate would be Governor.

MR. BARTON: Until the next election?

GOVERNOR LARSON: Yes, until the next election. Now, I have

not gone into that but I imagine the delegates will. I think you should be very careful in providing just what should be done in case the Governor dies. If he dies between the time he is elected and the time he takes office or a certain time afterward, or if he resigns shortly after election, then, of course, the election should be the next year—not at the next ensuing election because you would not have time. I think there should be ample provision for that and I think it should be clearly stated.

MR. GEORGE H. WALTON: Isn't it true that the office of Governor has become so arduous that there would actually be plenty of burdens a Lieutenant-Governor could relieve the Governor of?

GOVERNOR LARSON: You are assuming that the Lieutenant-Governor would be friendly toward the Governor and of the same political party. Now, it is possible he would not be friendly or of the same political party, and might not have the same viewpoints as to government. There would be a question then. Of course, you could raise the same point in the case where the Governor temporarily leaves the State and the President of the Senate is a member of the opposite party.

MR. HANSEN: Would it be possible to elect the Governor and Lieutenant-Governor by one vote, just as they elect the President and Vice-President? In New York State, Governor Dewey was elected Governor and the Lieutenant-Governor was elected separately. Would it be possible to elect them both by one vote?

GOVERNOR LARSON: There might be some objection to that. I think the voters should have the right to discriminate if the man running for Governor was very good and if they did not think so much of the candidate for Lieutenant-Governor, or vice-versa. I think they should have the right to separate them.

MR. SPENCER MILLER, JR.: Governor, I would like to ask a question which follows up a point Colonel Walton has already raised. We are presently in the task of preparing a Constitution, not for the next year but presumably for the next decade or even the next century. Within a period of 25 years there will be another million people in the State of New Jersey. We are becoming not only one of the great industrial states but are bound to see a much more complex type of development of the governmental function.

Why have the Governor burdened with increased responsibility? I assume you would agree that the Governor today has many more tasks than he can undertake to carry on. I wonder whether it is not in the order of things that we should increase the number of men in the Executive Branch who are carrying on the executive function; whether, as you look ahead and see the growth and development of this State, you do not think that the Lieutenant-Governor might perform a very useful function in the New Jersey of

1947 or the New Jersey of 1977? Isn't it possible that the expansion of the executive function is going to require additional elective officials who could carry it on?

GOVERNOR LARSON: My experience in the study of every state where they have a lieutenant-governor has been that that does not happen. The governor does not, as a rule, lean too heavily on the lieutenant-governor. He could, but he doesn't. He is just a standby to take over in case the governor becomes incapacitated. The fact of the matter is, the same thing holds true in the Federal Government as regards the Vice-President. It was only recently that the Vice-President was invited to the Cabinet meetings.

(Discussion off record)

MRS. BARUS: I was going to make this point, which I think is a good one, about the Lieutenant-Governor: There are a great many functions the Governor performs which really do not have much political color one way or another. The Lieutenant-Governor might be a man of a different party or with different policies, but a great many of the things the Governor has to do are very time-consuming, such as going about making speeches or visitations. So regardless of what a man thinks or what his policies are, he is there just as a representative of the people in an official capacity; and he might be of great assistance to the Governor if they did work well together.

Governor Edison, who could not be here, wrote and explained he was out of the State these two days. He submitted a little statement¹ which I will give to the Committee, and he made this point. Any man elected Governor is deluged with demands on his time. This or that group wants him to speak or hand out diplomas or lay a cornerstone, and every group is worthy of consideration. But, with only 24 hours a day, the Governor cannot handle it all and the Lieutenant-Governor could do at least some of that sort of thing for him. . .

GOVERNOR LARSON: If the Governor would let him do it. Sometimes you have a Governor who wants to lay all the cornerstones. If you have a Governor who doesn't want to do it, that is a different thing. I used to get the President of the Senate or somebody to represent me. But then we do have Governors who lay every cornerstone, big and little, all over; and they will still do that even if you have a Lieutenant-Governor.

I don't want the delegates to get the opinion that I am absolutely opposed to a Lieutenant-Governor. I can see where it has its advantages and, as Commissioner Miller said, the State is getting bigger. But it is not going to cure a lot of things some people think it is going to cure, because it is possible that if the Governor had a Lieutenant-Governor, he would do not only all the work he did

¹Refers in the Appendix to these Committee Proceedings.

before but more, because he won't let him have a chance—especially if he thinks he is the fellow who is going to take the second term I have advocated away from him.

MR. FARLEY: What is your attitude and viewpoint as to the right of the Governor to appoint his own Cabinet? When I say "Cabinet" I mean department heads during his term.

GOVERNOR LARSON: Of course, if you are going to hold a man responsible for what happens during his term, he certainly ought to be able to pick his own help. Now, I might preface my remarks on that. I don't want to equivocate, but at the same time I think we should have a new Constitution, and the only way we can get a new Constitution is to frame one that is good in the first place.

Second, it must be approved by the people. If you frame a good Constitution in this assemblage, but one that has too much opposition from too many different groups, you may wind up by having the old Constitution; so I wouldn't go too far afield in directions that are likely to be controversial, because I think we should have a new Constitution.

MR. FARLEY: You think the Governor should be responsible, and since he is responsible, he should have the right to appoint department heads during his incumbency?

GOVERNOR LARSON: Yes.

MR. FARLEY: Do you believe that in case of a vacancy in an office such as United States Senator the Governor should be confined to appointing a person of the same political faith; that is, if a Republican was the incumbent and died, do you think it should be in the Constitution that the Governor should be confined to a Republican appointment?

GOVERNOR LARSON: That depends on the Governor. You may get some Republican Governor who would not think any Democrats were good. Now, as a Republican, I know some Democrats who are good. I think there are Democrats who have ability and could represent the State fairly.

MR. FARLEY: My point is: Should there be a limitation in the Constitution that the Governor appoint a person of the same political faith as the person who originally held the office?

GOVERNOR LARSON: No.

MR. DAVID YOUNG, 3RD: I would like to ask the Governor if he would expound a little more as to how far the powers and authority of the Governor should go. There seem to be a number of people throughout the State who want to give the Governor everything, and there are some who believe in checks and balances. I would like to have your theory on that.

GOVERNOR LARSON: I believe in checks and balances. That is and has been our theory. If you frame that kind of Constitution you

have more chance of getting it approved than one that is one way too much or the other way too much. I think the Governor should be able to exercise his function and outline his plans, but his appointments should be submitted to the Senate for confirmation.

MR. MILTON A. FELLER: Governor, with reference to the consolidation and reallocation of the departments and administrative branches of the government, we have between 90 and 100 in the State now, and it is an acknowledged fact that they could very drastically be consolidated. In the proposed revision of 1942 the Constitution that was prepared consolidated and named the departments in the Constitution.

CHAIRMAN: Do you mean 1942 or 1944?

MR. FELLER: 1942. The New York State Constitution consolidates them and names them in the Constitution; but the other provision gave the Governor power to consolidate them and reallocate them to not more than 20.

GOVERNOR LARSON: I agree with Governor Driscoll. If you get too much in, you will find you are legislating. I think the Constitution should be as short as possible and as clear as possible and, as I said before, have fewer commas and more periods. It might not be as readable and as good from a literary standpoint, but you would understand it better. If it is decided that the Governor shall be elected for four years and has a right to succeed himself, you should say it without drawing it out with a lot of commas and semicolons.

MRS. BARUS: I intended to ask the question Senator Farley asked, but I would like to be a little more explicit and, if possible, have a more explicit answer.

Do you feel that the terms of the important departmental heads should run concurrently with the Governor's term?

GOVERNOR LARSON: What do you mean by important departmental heads?

MRS. BARUS: Probably half a dozen or eight or ten.

GOVERNOR LARSON: Some departments have been operating very efficiently regardless of whether their terms concurred with the Governor's or not, such as the Board of Control of Institutions and Agencies. They have done a very good job despite the fact that their terms did not end with the term of the Governor. There was more or less remote control of this Board. They worked very well. Their term now is for five years, but your suggestion would limit them to four years.

MRS. BARUS: Do you think that the present system of having their terms overlap the Governor's is all right?

GOVERNOR LARSON: I think there have been some commissions where that has happened.

MRS. BARUS: Which feature would outweigh the other?

GOVERNOR LARSON: I think you should make it a four-year term concurrent with the Governor's.

MR. BARTON: On the question of budgets, do you feel that the executive budget should have the right to stand and not be added to or detracted from by the Legislature?

GOVERNOR LARSON: You mean, the Governor should not have the right to make a budget?

MR. BARTON: That he should have the right, but that the budget should not be molested by the Legislature.

GOVERNOR LARSON: No, I don't think so. I think the Legislature should have the say in the formation of the budget.

MR. MILLER: Relative to the question concerning the appointment of the Governor's Cabinet, it has been suggested in two of the proposed revisions that the fiscal officers of the State should be appointed by joint action of the Legislature and that other administrative officers should be appointed by the Governor, with, of course, the advice and consent of the Senate. Does that conform to your pattern, or do you think that all officers, including the fiscal officers, should be appointed by the Governor?

GOVERNOR LARSON: How far down do you go?

MR. MILLER: The proposal that was made was that the Comptroller, Treasurer, and Auditor, as fiscal officers, should be appointed by joint session of the Legislature. There is the other suggestion that just the Comptroller should be appointed by the joint legislative body. My question is whether it is your feeling that administrative officers, as such, should be appointed by the Governor—all of them, or whether the fiscal officers should be appointed, as now is the practice, by a joint session of the Legislature?

GOVERNOR LARSON: I think so, because the fiscal officers, as named, really do not have anything to do with the Governor's policy. He could formulate his policy without making these appointments himself.

MR. MILLER: It is your feeling that the administrative officers, as Cabinet members, could be reappointed, and there would be no bar against their being reappointed if the Governor succeeded himself. They could successively be reappointed so that the principle of continuity of an efficient administrative officer would be accomplished.

GOVERNOR LARSON: I would be in favor of that. That is why I am in favor of the Governor having another term, because when he makes an appointment, the man who takes a job under him feels that if the Governor is held over for another term, he will be held, too. He may not be willing to take a job for three years, and might say, "I can't cut loose from my private practice for that short a time." But there is the other possibility that the Governor can get the man he wants.

MR. HANSEN: As I understand it, you have expressed the opinion that the Governor's term should be extended to four years and that he should be permitted to succeed himself for one additional term.

GOVERNOR LARSON: That's right.

MR. HANSEN: You anticipated the question I wanted to ask you. I was going to ask if you could give this Committee some reason why you think the Governor should be permitted to succeed himself. You have given one reason. Have you any other reason?

GOVERNOR LARSON: I think, with the State growing larger, things are not as simple as they used to be, and the policies that might be formulated by the Governor would be of a longer term. It would take longer to put them into effect, and he should have that time. As it is now with the three-year term, it is really only a two and a half year term. It takes two years to get started, and the third year they are all looking to see who the fellow is behind the door, to see what he is going to bring in or who he is going to bring on. We used to say that all you had to do was to walk into the Senate the third year and say "Hello, Governor," and every Senator would stand up.

(Laughter)

MRS. BARUS: I would like to make the point that, to my mind, one of the great arguments in favor of the Governor succeeding himself is not so much giving the Governor a chance to work out his policy and show what he is, but denial of succession limits the power of the people to a great extent. There seems to be no reason why you should penalize the people of the State and deny them the right to continue in office a man who has been a great public servant.

GOVERNOR LARSON: I might say, why don't you give the people the right to keep on electing a man as long as he does a good job? I used to say to Jack Farrell: "I know you were not around when the Constitution was framed, but why did they make the Governor's term three years?" He said, "They had a Governor once, and if you had not had that provision in there you would not have been Governor, because he would still be Governor." I think the Governor should have a chance to succeed himself and to have eight years to formulate his policies, but I do agree with your argument that we should give the people that right.

You could say, "Why don't you let him have another term?" Well, I figured out that if you have eight years for each Governor, that would make about 12 Governors in a century. We should have about 12 different ones in a century, and make it eight years.

MR. FELLER: There is also the question of power. The Governor does have a will for power, and the longer he is in office the

more opportunity he has, through appointments, to acquire a certain power.

GOVERNOR LARSON: In eight years he would pretty nearly have made all the important appointments. Now, if you allow him another term he has a whole machine. That is why I would limit it to eight.

MRS. BARUS: Perhaps the most outstanding example of a dictator was Huey Long in Louisiana. There the Governor could not succeed himself, but that didn't bother him a bit. He just put in a stooge.

GOVERNOR LARSON: I don't subscribe to that theory so much. I have been a student of the political history of New Jersey. Taking it from a real political standpoint, in 1895 they elected Griggs as Governor, and at that time the dominant party was the Republican. There followed a number of Republican Governors. Then the Democrats had a session, and they had Edwards, Silzer, and Moore. They had three Democrats in a row, and that was nine years. It was the same party and the same organization, so what was the difference whether you had three men for three years or one man for eight years? I don't have any fear as to that angle.

MR. BARTON: The question in your Farrell story, which was a good one, was: Why did they make it that way—for three years, not to succeed himself?

GOVERNOR LARSON: I don't know why they did that. You mean in 1844?

CHAIRMAN: Do you know the answer to your own question?

MR. BARTON: I know in my own mind. The Governor said he was a student of New Jersey politics.

CHAIRMAN: Why was it?

MR. BARTON: Because of his great power—no question about that. That was the reason behind it. Admitting that to be true, do you anticipate it because of today's conditions?

GOVERNOR LARSON: I don't think so. If you had a dominant party in the State and they elected three Governors, or five, in succession and the Democrats elected three. . .

MR. BARTON: Would you prefer their electing five Governors in a row to one man having power?

GOVERNOR LARSON: Not exactly. Sometimes the party elects a fellow who is not as good an organization man as they thought he was. Take the sheriff. In some counties they have a deputy-sheriff and the sheriff is in one year and the deputy-sheriff the next, and the old Spanish custom prevails and there isn't any difference.

CHAIRMAN: Are there any other questions?

MR. MILLER: Governor Larson, you spoke a moment ago concerning this matter of the number of departments. Have you any

feeling as to the exact number? Do you think that the Constitution should specify the precise number of departments of government? Should it set a floor or ceiling so far as the number is concerned?

GOVERNOR LARSON: Years ago they had so many commissions that even the newspaper boys lost count, and then they got into the consolidation. I don't think it is necessary to limit the number. However, if you do it you should not make it so that it would hamper anybody, or you will have to change the Constitution after awhile. Not more than 20, I think, would cover it.

MR. FELLER: In cases where the Governor makes an appointment with the advice and consent of the Senate, do you think there should be any time limitation put upon the Senate during which they should either confirm or reject, or it would automatically become a veto?

GOVERNOR LARSON: I don't like a provision that curtails the powers of the Legislature too much, because after all the Legislature is elected by the people and its members are supposed to be the people's representatives. It doesn't make any difference what any individual says—they are the representatives of the people and they are closer to them than anybody else because they come from districts; and if there are any mistakes in the Legislature, it is the people who put them there. I don't think there should be too much tampering with the powers of the Legislature.

MR. BARTON: Is the question of a single State Fund and a single fiscal year for the Executive Committee?

CHAIRMAN: That has been handed to the Taxation and Finance Committee, but I don't think there is any reason why that question should not be asked here and put on the record, unless someone has an objection.

MR. BARTON: That is the question of consolidating the State Fund and a single fiscal year for everyone in the State outside of municipalities.

GOVERNOR LARSON: You mean, have everything in one fund?

MR. BARTON: Yes.

GOVERNOR LARSON: Well now, I want to say I never claimed to be a financial expert. When you get into finance, I am not an accountant. However, I have some simple rules that I follow in my own business. It would be easier to see what it was if it were in one place, if that is what you mean. . . Are you talking about dedicated funds?

MR. BARTON: That is part of it.

GOVERNOR LARSON: When you talk about dedicated funds—of course, when you try to eliminate them you are going to arouse a very, very powerful opposition in certain quarters. You realize that, don't you?

MR. BARTON: Very much so.

GOVERNOR LARSON: As I said before, I would like to see a new Constitution. I think it is time for it, but I don't think that the Constitution you are going to make here is going to last 100 years because we are moving too fast. I don't think anybody can foresee 100 years from now because things are moving swiftly and changing radically. But we should make it as enduring as possible. No matter how good it is, if it doesn't have the support of the people, you will go back to the Constitution of 1844. When the fathers of our country framed the Constitution of the United States, it was a compromise in many respects but I think it is a very good Constitution.

MR. BARTON: You think it might be injurious to the cause?

GOVERNOR LARSON: Yes. I think anybody who has looked in to it realizes you could get very serious opposition from some quarters.

MR. FELLER: One of the reasons the 1944 Constitution was defeated was because the people had to take all or nothing, and that was the means of accumulating a lot of negative votes. Now, under the Convention method, the Convention has a right to submit the Constitution in whole or in parts. I think it would be good policy to submit those controversial issues separately—the known controversial issues of any nature.

GOVERNOR LARSON: How many elections would you have?

MR. FELLER: One.

GOVERNOR LARSON: You would have that as a separate issue?

MR. FELLER: Yes.

GOVERNOR LARSON: It might be, but there still would be the danger that it might affect the acceptability of your whole Constitution. *You* might understand that you could vote for one and not vote for the other, but could you put it over to the people?

MR. FELLER: If it is controversial and if provisions are put in to satisfy one side, the other side will be in opposition.

GOVERNOR LARSON: As I said, you are not going to sit down here among yourselves and frame a Constitution that will be satisfactory to all the delegates in every detail. I think that is one of the principles of the form of government under which we live.

CHAIRMAN: I would like to make a few observations about this subject of a Lieutenant-Governor. The only argument I have heard in favor of it is that if the Governor uses the Lieutenant-Governor, it might save him some time. But I think it is a very bad set-up that in the United States Government, and in some states, the people elect a Vice-President or a lieutenant-governor who becomes the presiding officer of the Senate. The Senate of the United States and the Senate of each state are the senior deliberating bodies. I cannot be convinced that the office of presiding officer

cannot better be filled with a man elected from their own membership than with one elected for them by the people. Nor can I be convinced that that same Senate cannot appoint more intelligent committees which will function better than those appointed by a man who comes from outside and who may never have served in the Senate or in the Legislature at all. I think that is a very grave weakness in our Federal Constitution. If the feeling is that we should have a Lieutenant-Governor as an assistant to the Governor, I would certainly hope that he would not be made the President of the Senate. I see no reason for that at all.

GOVERNOR LARSON: Your arguments are well taken, Senator. You might have a Lieutenant-Governor not at all in harmony with the majority of the Senate, and he would get in there and appoint all the committees. That is one of the objections to having the Lieutenant-Governor in the Senate, and it has been objected to strenuously in other states.

MR. WALTON: The Vice-President does not appoint committees in the United States Senate.

CHAIRMAN: No, he does not. But we would have to change our procedure. He has great power.

MR. YOUNG: He can hold up signing bills and hold them over.

MR. FELLER: Suppose the Lieutenant-Governor was assigned to the Executive Department, or made Secretary of State or something like that, or kept in the Executive Branch of the Government to which he was elected?

GOVERNOR LARSON: Well, if you define too clearly the duties of the Lieutenant-Governor and say what he should do, then you are taking something away from the Governor and you are putting two shifts in there.

MR. FELLER: I agree with Senator Van Alstyne. In order to retain our system of checks and balances it might be bad policy to put a member of the Executive Department over a branch of the Legislative Department. After all, other constitutions give him the specific duty of being President of the Senate. Suppose this Constitution gave him the specific duty of being Secretary of State or something else, would there be any objection?

GOVERNOR LARSON: I don't know about making him Secretary of State.

MR. FELLER: Or something similar. . . . The reason I mention that is because the Secretary of State has, in past practice, been closest to the Governor.

GOVERNOR LARSON: When I was Governor—and the same was true with other Governors—the personal secretary was really close to him and did a lot of work that you now say should be done by the Lieutenant-Governor.

MR. MILLER: May I pursue now the question raised by Senator Barton concerning a single fund? When delegates to the Missouri Convention framed a new constitution for Missouri they wrote into it a constitutional provision dedicating highway funds. Would it be your judgment that that would be a matter that would wisely be avoided as far as our State is concerned?

GOVERNOR LARSON: You mean, separate the funds like highway funds?

MR. MILLER: Yes.

GOVERNOR LARSON: Personally, I would have some reason to say that highway funds should be kept for highway purposes. That is the only reason I voted for the gasoline tax—because the bill provided that the money should be spent for roads. If the new Constitution puts it into one account and under that provision the people could be taxed for gasoline and you could expend that money for other purposes, it would not be fair to motorists.

Consider the problem of the money received from hunting and fishing licenses. That money is now in a dedicated fund to be used for certain purposes. Of course, those who are against dedicated funds say that people should pay the license fee and this revenue should go into the State Fund. Those who paid for the licenses and who want the money used for buying land and for fish and game propagation would have to go to the Legislature and sell them the idea. They now have control of that.

You will have some objection from people who own automobiles and pay the gasoline tax. I will be frank and admit there is some justification. I said I only voted for the gasoline tax on that premise. It is a special tax imposed on a portion of the people.

Then you will have the opposition of all the sportsmen, and if you don't think there are a lot of them and that they haven't any ideas, come down to my office some day. They have all kind of ideas about game, and if they don't get fish, they write in and say, "What do you do with the fish?"

MR. YOUNG: While in office, did you feel that you had enough power to carry out what you desired to put over at that time?

GOVERNOR LARSON: During the time I was there I had a working majority in both houses of the Legislature, and they were friendly. The thing I advocated was elimination of pollution, clearing up of the beaches. Everybody was in favor of it and the program was carried out. I advocated another thing and it was carried out; we settled the boundary dispute and conserved to the people of the State of New Jersey their rights to the waters in the Delaware.

These were conservation measures that were talked about in those days, and I had the cooperation of the Legislature to put over my program in three years.

MR. YOUNG: In other words, you felt you had enough power to put that program over?

GOVERNOR LARSON: I did.

MR. YOUNG: Do you think, therefore, there should be an increase in power? You answered my question before—that you believed in checks and balances.

GOVERNOR LARSON: That's right.

MR. YOUNG: Shortly thereafter you said the Governor should have the power of appointing everybody, I think you said, with the exception of the Comptroller, Treasurer and Auditor. Do you think that is going beyond the principle of checks and balances, or is still within the checks and balances?

GOVERNOR LARSON: I don't think it is going beyond—where there is the consent of the Senate. There is the balance.

MR. YOUNG: That would apply to every department: Motor Vehicle, Highway, and everything else.

GOVERNOR LARSON: How much different is it now?

MR. YOUNG: The Commissioner of Motor Vehicles has been elected by the Legislature in some years, and in some years nominated by the Governor. In other words, are we going to tie that up in the Constitution so that it can be done in only one way?

GOVERNOR LARSON: At the outset, I said the Governor should have the right to appoint the judiciary.

MR. YOUNG: Do you want to extend that thought any further?

GOVERNOR LARSON: I am positive he should have that right. The others, I admit, are more or less controversial, but I think the Governor should have sufficient power to appoint the heads of the departments so that he can formulate a policy and be held responsible for the failure of it or get credit for it if he is successful in putting it over.

MR. YOUNG: That would mean that in any department that might be set up in the future, the Governor would make the appointment with the confirmation of the Senate, regardless of what the department was. Suppose the Legislature wanted to set up a Department of Investigation, as they did in New York, that would investigate and check the various departments for the Legislature, to see whether the heads of those departments were acting in accordance with their wishes—not only the Governor's wishes, but their wishes. Would that hinder them?

GOVERNOR LARSON: You could make provision for that. I don't think it would. You mean a special committee or something?

MR. YOUNG: I think over in New York they had an Investigation Department. Around Trenton the hardest thing to get is facts, and if the Legislature wanted to set up a department to which it could go, as Congress does, and also have that department investigate

heads of departments in the Executive Branch, if the appointing power we speak of is in the Constitution, then the Governor would be appointing the head of that department.

GOVERNOR LARSON: He should not do that. That should be under legislative control.

MR. YOUNG: Then you think there should be some exception to the Governor making all appointments?

GOVERNOR LARSON: I don't think the Governor should have so much power that the Legislature takes nothing. The members of the Legislature, as I said before, are close to the people and have certain rights and should retain those rights; and the Governor should have sufficient power to make his appointments, so that he could be held responsible for the failure of his program or receive credit for the success of it.

MR. YOUNG: The whole thing comes down to how far you are going to go with appointments. The Governor appoints the prosecutors and the members of the various county tax boards. Do you think those appointments are enough, particularly the first year or two, to keep the Legislature in control so that he can get what he wants?

GOVERNOR LARSON: How many more appointments would there be besides the ones you mentioned?

MR. YOUNG: We are getting into heads of departments of the State.

GOVERNOR LARSON: The Governor does that now. He makes those appointments now.

MR. YOUNG: There is no limitation of it in the Constitution; in other words, the Legislature could pass an act tomorrow morning, and could repass it over the veto of the Governor, that the head of the Department of Motor Vehicles shall be appointed in joint session. Do you think we should put a provision in the new Constitution to stop that, or leave it as it is?

GOVERNOR LARSON: I see what you are driving at. You want to know whether it is right?

MR. YOUNG: I am just asking a question.

GOVERNOR LARSON: You want to know whether in my opinion it is good policy to have set out in the Constitution that the Governor shall have the power to make these appointments, and, if that becomes a constitutional provision, that the Legislature has no right to change it except through constitutional amendment?

MR. YOUNG: That's right.

GOVERNOR LARSON: Now, I will go back to where I was. There are certain limits to all those things. Don't make it so that he has everything, because then the Governor could become a dictator. There, again, there should be a limit and the Legislature should

retain some of the powers it already has. There is no doubt about what you mentioned before regarding the power to make an investigation. There should be power to do that.

CHAIRMAN: You said you felt the Governor should appoint all the department heads for a four-year term concurrent with his. If that were done, we should change the present set-up, such as the Department of Institutions and Agencies and the Department of Agriculture.

GOVERNOR LARSON: Yes, because they run longer.

CHAIRMAN: The members of the State Board of Control appointed by the Governor are the ones who select the present Commissioner of Institutions and Agencies, and there is a State Board of Agriculture which elects the Secretary. The Governor doesn't do that. In the case of Institutions and Agencies, the Governor doesn't have veto power. I believe in the case of the Board of Agriculture he does have veto power; it has to be with his approval. Do you feel that those should be changed so the Governor has the appointment?

GOVERNOR LARSON: As I said before, that system has worked very well. In the last years there has not been much criticism; there has been more praise. However, when framing the Constitution you will have to have some rule to go by, but you will have what you had before.

CHAIRMAN: You think a specific rule should be set up without deviation in regard to any department?

GOVERNOR LARSON: I didn't say that. I said that if you think it wise to make an exception, the delegates should have the right to do that.

CHAIRMAN: There should be power set forth in the Constitution to make an exception with respect to the various departments? That would be a legislative decision. In other words, the decision should be left to the Legislature within the framework of the Constitution to decide in which cases an exception should be made?

GOVERNOR LARSON: That's right. I don't think the Constitution should so bind the Legislature and the people that you cannot move at all.

CHAIRMAN: Or so that it cannot be deviated from without a constitutional amendment.

MR. J. SPENCER SMITH: During your term as Governor you had a great many boards, some bi-partisan. Did you find any difficulty as Governor, regardless of political lines, in having those boards function in harmony with your views?

GOVERNOR LARSON: No, I did not. I will say this—when I was Governor I received the cooperation of all departments, regardless of their political makeup. I had no trouble.

MR. SMITH: If a Governor uses common sense, isn't it likely

that he can carry through pretty nearly anything he wants under our present constitutional set-up, and can carry out his ideas other than what may be called for by the Legislature? In asking that question, I am thinking of you and other Governors I have served under. I recall those great things you put through that the people probably don't know about but which have since redounded to the benefit of the State. I know you had to work through a commission not of your own party. Now, I come back to the question of whether or not a great deal depends upon the Governor himself as to what he can do or cannot do.

GOVERNOR LARSON: That is true in all cases. The question was asked before about the appointment of the Governor's Cabinet. I think he should have the right to appoint people who really are in position to carry on his policies. I am not against that at all.

MR. SMITH: I was only trying to bring out the point that these commissions and boards did cooperate with you regardless of their political complexion.

GOVERNOR LARSON: I never had any trouble.

MR. SMITH: One of the reasons you were able to do what you did in those great programs was because you had an Attorney-General of your own appointment. In order to carry out the wishes of the Governor, you think the Governor should have the right of appointment to terms concurrent with his, because without that you would not have accomplished some of the things you did.

GOVERNOR LARSON: There are better chances of doing it with an Attorney-General whom the Governor himself appoints.

MRS. BARUS: I would like to go back to the question Senator Young raised. It seems to me that there would be a very clear line between the executive power to appoint and the legislative power to investigate, and obviously it is understood that all powers not specifically granted to somebody else remain in the Legislature. One of the proposed revisions stated that as an Article. That would not interfere with the Legislature's power to appoint a department to investigate.

MR. YOUNG: I am talking about a department like they have in New York State—a branch of the government which you can place anywhere you want.

MR. FELLER: Those departments that are administrative in character—do you believe the Governor should appoint the heads of those departments?

GOVERNOR LARSON: Yes, where it would help him to formulate his policies.

MR. FELLER: Most of the departments in the State Government are of that type.

MR. FARLEY: Governor, do you believe in a pocket veto?

GOVERNOR LARSON: I don't believe I would use it. I would say that if you were not in favor of a bill, just veto it and give the Legislature a chance to exercise its duties. However, if the Legislature is not in session, what are you going to do with the bill?

MR. FARLEY: From the personal experience you have had, do you think there should be some provision in the Constitution requiring the Governor to express his reason for the veto, rather than—

GOVERNOR LARSON: Do you mean, just veto it and not say why? I never did that. I always gave a reason.

MR. FARLEY: Do you think you should let a bill die after five days? Do you think that should be in the present Constitution?

GOVERNOR LARSON: I never saw much harm in it. I don't think it is vital one way or the other.

MR. YOUNG: If there were a question in the Constitutional Convention as to just how far you should go with the appointing powers to make sure the Governor would be able to carry on his program, what majority do you think necessary so that he can be in a position to carry that out? If there were a question as to all or part of it, what ones do you think should be appointed concurrent with his term—such as, I presume you mean, the Attorney-General? You think he should have the appointment of that office?

GOVERNOR LARSON: If you start, why not take them all in? Take the constitutional departments which are that way now—but then you get into the Highway Department. Now, the term of the Commissioner, the term of Commissioner Miller, does not run concurrently with that of the Governor. There are, of course, others. The members of the State Board of Control are appointed for terms longer than the Governor's term. There the appointment of the Commissioner is made by the Board. As I said before, my experience with some of these boards has been so good and they have done such a good job that I think perhaps you could make exceptions there.

MR. YOUNG: Taking, for instance, the Highway Department—which is certainly a long-range viewpoint—don't you think that making the appointment for a period of four years is going to limit the scope and activity of a good commissioner? You don't do highway building in two or three years; you have a program that takes seven or eight years.

GOVERNOR LARSON: That goes to the question of whether a Governor can succeed himself. If a commissioner does a good job that will reflect to the credit of the Governor, he will be appointed for another four years.

MR. YOUNG: Wouldn't it be hard to get a person for a four-year job if he has to give up something in his own field? We will be limited to the type of people we can get.

GOVERNOR LARSON: There is no question about that. You will have all these questions come up, and there are arguments for both sides.

MR. MILLER: I refer to the investigatory powers to which Senator Young made reference. He was talking about powers of investigation so far as the Legislature is concerned. Governor, what is your thought as to the investigatory powers of the Governor? In New York State the Governor has the appointment of a Moreland commission. Its powers are great, and such commissions have brought about some important reforms over the past 25 years. Is it your belief that some investigatory power should be vested in the Governor?

GOVERNOR LARSON: I think that is perhaps one of the things to be determined by the Legislature, rather than by the Executive.

MR. MILLER: There are some powers existent now. Our statute is almost analogous to the New York law. The question is whether the matter should be legislative or whether it should be constitutional.

GOVERNOR LARSON: It isn't constitutional in New York. The results are good there. It could be determined by the Legislature.

MR. MILLER: That has been one of the questions that has been raised—whether a certain investigatory power in the Governor should be spelled out in the Constitution. Your answer is that you think it should be legislative rather than constitutional?

GOVERNOR LARSON: If you are going to put all this in the Constitution—

MR. MILLER: I agree with your major premise that we should keep it simple.

MR. BARTON: To hark back to the question of signing bills that Senator Farley brought up, is there anything that stands out in your mind during your term as Governor that you now consider a sore spot in connection with the signing of bills—as to when they are received, signed, failure to sign, or anything connected with the Executive phase, anything outstanding?

GOVERNOR LARSON: I never had any.

MR. BARTON: Is there any reform that would work better, in the light of some instance that came up during your term?

GOVERNOR LARSON: I never had any trouble either in the Legislature or as Governor.

MR. FELLER: Under the Constitution, the Governor now has five days in which to sign or veto a bill.

GOVERNOR LARSON: If he receives it. He doesn't have to receive it; he can wait a couple of months. He simply doesn't ask for it from the Legislature.

CHAIRMAN: I think a lot of people feel that many of these bills signed are unconstitutional.

MRS. BARUS: Couldn't the Legislature swamp the Governor by sending them all at once and there would not be enough hours for him to read them if he sat up all night?

GOVERNOR LARSON: The point that Senator Van Alstyne raised is that some people question the constitutionality of these laws because they are handled that way.

CHAIRMAN: The Governor may have been studying them for two months, but the original bill doesn't get into his hands.

I would like to ask the Governor to comment on a subject that has not yet been touched upon, and that is the military. Do you have any comments as to how you feel that should be handled? The militia question is under the jurisdiction of this Committee.

GOVERNOR LARSON: Of course, the Governor is Commander-in-Chief. I might say that when I was Governor there was not any trouble between the Generals.¹ They all functioned very harmoniously, but I always thought the control was a little too low. There could be a lot of trouble if there was friction between the Generals and the different departments.

CHAIRMAN: Some people advocate that the military should be under the direction of one man. There are two branches to our military system. What do you think?

GOVERNOR LARSON: I am not a military expert. Of course, I took part as head of it and, as I said, in my day it was functioning very easily and efficiently. Whether that could be improved by having one man top the other . . . I can say that from the standpoint of efficiency it might be better to have one man designated as the top. I have found that in any organization it is a good idea to have some one man at the head of it. As it is now, the Governor is really the head of it; he is the Commander-in-Chief; he is supposed to keep these men in line and direct the thing. Now, if we have one General superior to the other, why not leave it to the Governor who is really the head of it?

CHAIRMAN: Then you are not one who is definitely advocating more unity of command; you don't think that it is necessary?

GOVERNOR LARSON: I think you have that now in the Governor, and I think that is where it belongs. The Governor is Commander-in-Chief. Sometimes the Governor leans on one General more than on the other, depending on which he thinks more efficient. They have their duties prescribed. You have the Adjutant-General and the Quartermaster-General.

MR. FARLEY: Do you feel that your conclusion relative to appointment by the Governor of the administrative staff should likewise apply to the military staff—that he should appoint the Adjutant-General and the Quartermaster-General for his term of

¹ The Adjutant-General and the Quartermaster-General.

office? They are constitutional officers and have life-time tenure. Do you believe their terms should be concurrent with his term?

GOVERNOR LARSON: You might have to separate these Generals from generals in the regular army because these men—the Generals—sometimes have other business activities. It isn't like a fellow putting in his time in service. However, most of these men have been in the National Guard since they were just boys and they grew up in the National Guard, and I think a lot of them have looked forward to the time when they would be one of the top men in it. Now, if you have the idea that some day they are going to be appointed every four years, you may have trouble in your National Guard.

MR. FARLEY: Do you believe theirs should be a constitutional office, or that they should be appointed by the Legislature and the term determined by the Legislature?

GOVERNOR LARSON: Frankly, I haven't thought much about that phase of it. I never had much trouble about that constitutional provision or about their being constitutional officers. Offhand, I would be inclined to leave it just the way it is.

MR. WALTON: When you said that after all the Governor is the head as Commander-in-Chief, aren't you—when you don't give him a Chief-of-Staff who is top man—aren't you in effect making him the departmental head of the military?

GOVERNOR LARSON: You mean, he hasn't anything to say?

MR. WALTON: If he has a number of Generals under him, no one of whom is Chief-of-Staff or tops the other, you are really giving the Governor the responsibility of being the departmental military head, to watch whether this man is doing a job or whether this section or that section is operating.

GOVERNOR LARSON: What I am talking about is my own personal experience when I was Governor. I was Commander-in-Chief and I took care of a lot of details myself. I had no trouble with the Generals.

MR. MILLER: Before we get into the question of the State Militia, couldn't we find out what changes have taken place in the federal laws and in the armies of the State? I think there have been some changes, and before we go too far we should find out what those changes are.

CHAIRMAN: I had in mind having those Generals before us, the Quartermaster-General and the Adjutant-General.

MR. FARLEY: The Chairman has in mind to have before this Committee the set-up of the State Militia. I think they will present us with the facts and necessary changes.

CHAIRMAN: I thought, "Who would know better than our Quartermaster-General and Adjutant-General?" They know all the details.

Does anyone else have any more questions on the military? The

present Constitution makes it mandatory upon the Legislature to organize the militia. The 1944 proposed Constitution made it permissible, and left it up to the Legislature.

GOVERNOR LARSON: I think I would leave it up to the Legislature, and if they have the need for it they would do it. If you made it mandatory, what would happen if the Legislature did not provide any funds? They would still not have any militia.

CHAIRMAN: Anything else on the military?

MR. MILLER: You were speaking a moment ago about constitutional offices. Under the Constitution of 1844 the Principal Keeper of the State Prison is a constitutional officer. Is it your judgment that the Principal Keeper should be appointed by the Commissioner of Institutions and Agencies, to whom presumably he is responsible, or should he be continued in the position of a constitutional officer?

GOVERNOR LARSON: It all depends on how you set up the institutions. The Governor now appoints the Principal Keeper, and while that may be a part of Institutions and Agencies, there is a question whether—

CHAIRMAN: You have a situation there where the Governor makes the appointment. The Governor does not directly or even indirectly appoint the Commissioner of Institutions and Agencies, who is the senior officer to the man the Governor appoints.

GOVERNOR LARSON: You always get those situations where you have commissions that are outside the Governor's appointment, and it would be simpler if they were all by the Governor right down the line. But some of these commissions have operated very efficiently. That should be taken into consideration.

CHAIRMAN: Couldn't you, in effect, continue the efficiency of those commissions but make it so that no one of the department heads appointed by them could be confirmed without the approval of the Governor? I am thinking in terms of the Department of Institutions and Agencies which, next to the Highway Department, spends more money than any department in the State. At the present time the Governor cannot appoint him, and he has no negation on that appointment.

GOVERNOR LARSON: I think he does.

CHAIRMAN: I am talking about the Commissioner of Institutions and Agencies.

GOVERNOR LARSON: If it is that way, I think the Governor should have something to say about it.

MR. FARLEY: Under the present system they are sovereigns themselves; the Governor cannot control the appointment in view of the fact they have a sufficient majority to override the wishes of the Governor. I therefore believe the Governor should have something to say.

CHAIRMAN: The Governor should have negation on the appointment of any Commissioner by the Board.

MRS. BARUS: Suppose a bad job is being done in one of these departments which is removed from the political structure of the State. The people have no recourse; they have no one to hold responsible; if they think the department is wastefully or dishonestly run, they cannot reach the department head because there is a bloc that takes him out of the whole body politic.

GOVERNOR LARSON: If you make that a constitutional provision, then you are not in as good position as now. Now this Board is created by legislative action, but if you put it in as a constitutional provision you can only get it out by having an amendment. So, if you are going to leave them there, you will have to have some checks and balances either by the Governor or the Legislature or both, or else put them in with the rest of the departments.

MRS. BARUS: The Governor would be up against a very grave problem, which is the same one the Convention is up against—powerful opposition. And the Legislature is in a less advantageous position to deal with that than the Convention, because many of us are not in politics and are not going to be elected to another Convention in our lifetime. We can stand a little apart. You see my point? I am not making it very clear, but I think it difficult for the Legislature to buck up against organized opposition from a large department. So, while the Legislature has the power to do it in effect, it would be extraordinary if it did any such thing.

MR. SMITH: Speaking from the book of personal experience, if the Appropriations Committee won't give you the money, you stop; and if you try to do anything that the public doesn't like, they come before the Appropriations Committee and you don't get the money. I know that only too well.

MRS. BARUS: I still have an argument there. You can't just stop the appropriation for food to feed the people in insane asylums.

GOVERNOR LARSON: I once got a letter from an inmate in an insane asylum. He said he realized that I had a lot of trouble in that department, but all I had to do was to put John Ellis and "Spike" Gerry inside and put those fellows outside, and that would be the solution.

(Laughter)

CHAIRMAN: Is there anything else we want to discuss with the Governor?

MRS. BARUS: Senator Barton raised the point about the executive budget. Isn't the theory of the executive budget that the Executive presents it and then, not that the Legislature has to accept it, but that they have to act upon it before making another appropriation?

GOVERNOR LARSON: They just take it as a guide.

MRS. BARUS: The theory is to the effect that the Governor's budget should stand and not be added to.

CHAIRMAN: At the present time, the Governor's budget has no substance or standing in law of any kind or description. It has simply come about through custom that the Chief Executive presents two things to the Legislature at the beginning of the year: his inaugural message and proposed financial budget. The Legislature can take his budget and throw it in the river and never look at it.

MRS. BARUS: The theory of the executive budget is that the Legislature is required to act on his budget sometime—not necessarily approve it, but take action—consider or act on it before putting in a second one.

MR. BARTON: There are those who propose that in view of the fact that the Governor has no budgetary power, that that should be included in these other powers. I wonder if Governor Larson has a viewpoint on the proposition that the Governor frame his budget and that it should not then be supplemented.

GOVERNOR LARSON: Absolutely not.

MR. FARLEY: Supplementing Senator Barton's presentation, the Governor now has the inherent veto of all or part of the appropriation bill. That is the safety valve of checks and balances. If you adhere to the theory of making it mandatory upon the Legislature to accept, and eliminate from the Legislature the entire power of the people, there would be a dictatorship.

MR. YOUNG: As I understand it, the Governor has the right to veto line items in the appropriation bill. Now, you stated a little while ago that a three-fifths vote to override a veto would be sufficient to give him enough power and yet increase it over what it is today. You still feel, or you intimate, that the Legislature is the governor of the purse-string and that there should still be a three-fifths vote required as far as that veto is concerned?

GOVERNOR LARSON: You mean, it should go back to a bare majority?

MR. YOUNG: Whether it should be three-fifths or two-thirds—

GOVERNOR LARSON: I have never thought about that phase of it, but I think if it is made three-fifths, it would be better all around.

CHAIRMAN: In the case of the Governor's budget, isn't the Governor's veto final and there can be no overriding of it?

GOVERNOR LARSON: Oh, no.

CHAIRMAN: Can the Legislature override the Governor on that, too?

GOVERNOR LARSON: Yes, that has been done. You can pass a bill notwithstanding his veto.

MR. YOUNG: The question is: Do you think that in connection with any item of funds there should be an increase of 50 percent or 60 percent in order to override the veto?

GOVERNOR LARSON: Three-fifths, I admit, was what I had in my own mind; and I made a mathematical calculation that it would increase the number of required votes from 31 to 36 in the House and from 11 to 13 in the Senate. That would be a fair proposition, to my mind.

MR. YOUNG: May I ask this? Have you taken into consideration, when you say three-fifths, the fact that Assemblymen are elected in a county, an entire county, rather than districts? An Assemblyman from one of these large counties, running in 15 or 20 different places, would have to spend a lot of money to get elected. He would have to be with the organization or he wouldn't get elected; he is therefore under the control of one or two men in that particular county. When you increase this overriding of the Governor's veto with regard to finances, have you taken that into consideration? Certain counties, for example, have a definite bloc of votes in the Assembly.

GOVERNOR LARSON: You have to stop somewhere.

CHAIRMAN: Are there any more questions? . . . If not, thank you very much, Governor, for coming before us.

(Recess for luncheon at 12:50 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, June 24, 1947

(Afternoon session)

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

PRESENT: Barton, Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: The meeting will come to order. The Secretary will please note those present and absent.

Governor Driscoll, thank you very much for coming here before the Committee. With the permission of the rest of the Committee, I would like to turn the meeting over to you, sir, for your statement; and, after you have finished, if you will allow us to ask you some questions. . . .

GOVERNOR ALFRED E. DRISCOLL: Mr. Chairman, I would like at the outset, if I may, to ask for the indulgence of the Committee. Unhappily, I have been indisposed for two or three days, and accordingly have not completed the preparation of the formal memorandum. If I may, and should the need for a formal statement arise, I will ask for permission to substitute a formal memorandum for my present extemporaneous remarks. (*Reading*):

"The powers of the government shall be divided into three distinct departments--the Legislative, Executive, and Judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided."

So states Article III of the present Constitution of the State of New Jersey. With the forepart of that statement I am in hearty agreement. If your predecessors, the framers of the 1844 Constitution, had refrained from including the exception, the time-honored device adopted by those of unsettled mind, the statement contained in Article III would have my unqualified and enthusiastic endorsement.

No similar provision appears in the Federal Constitution, nor was any required. The gentlemen who met in 1787 proceeded with customary clarity, without embellishment, to state in Section I of Article II, "The executive power shall be vested in a President of

the United States of America." It is true that the framers of the 1844 Constitution stated, in paragraph 1 of Article V, "The Executive power shall be vested in a Governor." Nonetheless, your predecessors had serious reservations, and these reservations, incorporated in the 1844 Constitution in numerous sections, have effectively handicapped your Governor in the performance of executive duties expected of him by the citizens of the State to whom he is responsible.

At the outset I would like to emphasize that my interest is in the entire Constitution, rather than a particular portion. I would strengthen each of the basic branches of the Government: Executive, Legislative, Judicial; and in doing so retain the traditional checks and balances that make our form of government unique among the governments of the world.

A constitution should allocate authority; it should not prescribe detail. Accordingly, I would suggest that we return to the basic principles of 1787, without the encumbering, frequently cumbersome, and occasionally disastrous, reservations that were incorporated in the 1844 state document.

I recommend the extension of the term of future Governors to four years. The election for a Governor should, in my judgment, occur in odd-numbered years. In any event, the election for a Governor and for Assemblymen should not coincide with a Presidential election. The importance of a gubernatorial election merits an election that will not be overshadowed by a national contest for the Presidency. The problems confronting the State are frequently distinct from those confronting the nation. If we are to develop a new working federalism in this country and thus save the republican form of government, guaranteed incidentally in the Federal Constitution, federal election should determine national policies, while the state election should determine state policies and administrative issues of major importance.

Future Governors should be granted the privilege of succeeding themselves, if this be the will of the majority of the citizens of the State. I believe in our republican form of government. I have no fear of democracy. Accordingly, I am prepared to trust our citizens. Therefore, I would permit a Governor to stand for reelection, and in doing so, to submit his progress to the crucial test of approval or disapproval by our citizens.

The Governor finds himself today in rather strange company. The company consists of our sheriffs and our coroners who, like the Governor, are prohibited from seeking reelection. The possibility of reelection would, in my judgment, encourage the Governor to represent the best interests of his constituents, in the hope that if he chose to run for reelection, he would merit their favorable approval.

I'm likewise convinced that the privilege of succession would materially assist a new Governor in obtaining better qualified men and women for appointment to important posts whose terms may be co-terminous with that of the Governor. The argument that a Governor should not be permitted to succeed himself in order to prevent him from developing a powerful political machine is, in my judgment, without merit. I am not prepared to accept the theory that a Governor will or even could develop a political machine merely because he may have an opportunity for succession. A limitation on succession in the 1844 document has not prevented the development of powerful political machines in this State, both of the Republican as well as the Democratic variety. These machines have frequently dictated the selection of a Governor. By virtue of the limitations imposed upon the Governor in the present Constitution, namely, limited authority, limited term, and no opportunity to challenge the machine at the polls after a reelection campaign, political bosses in the past have occasionally controlled the activities of the Governor during his short term of office.

In other words, our Constitution, by virtue of the very limitations contained therein, upon occasion has tended to make the Governor the servant of a political machine rather than of the citizens generally. As for the political machine, as my predecessor Governor Woodrow Wilson stated, the present Constitution requires only sufficient patience on the part of political bosses "to sit out one term to be rid of a nuisance" who may have sought to be Governor in fact as well as in name.

If safeguards are required, and they may well be, I recommend a limitation similar to that contained in the Oregon or Delaware constitutions. The former prescribes that a Governor shall serve no more than eight years in any 12-year period. In the latter, a Governor is ineligible for a third four-year term.

The principle that enlists my support is the right of a Governor to take his case to the people. It is my hope that a longer term and the privilege of succession for at least one term would materially assist the Governor in obtaining better qualified nominees for submission to the Senate.

In my judgment the veto power of the Governor should be redefined. A two-thirds vote should be required to override a veto. This would promote the orderly business of the Government—particularly on those occasions when the Governor is a member of one party while the majority of the Legislature are members of another party. During the period the Legislature is in session, the Governor should have ten days within which to consider legislation submitted to him for his approval or disapproval. All legislation should be approved or disapproved by the Governor within 30 days following adjournment of the Legislature *sine die*.

The Legislature should be given the authority to elect a State Auditor, whose duties should be confined to reasonable checks to insure the effectuation of legislative mandates and post-audits. All appointments for the Executive and Judicial Branches of the government, above civil service rank, should be made by the Governor, subject to confirmation by the Senate. In other words, I hope the new Constitution will authorize the Legislature, in joint session, to elect an Auditor, to be the arm of the Legislature, to insure the discharge of legislative mandates, and to post-audit executive activities.

The Senate should either confirm or reject nominations made by the Governor within a reasonable period of time. Thirty days would seem to me to be such a reasonable period of time, although there is no particular magic in the limit of 30 days. You may very well select 45 or 60 days, or perhaps a lesser period, but it should not be less than 30 days, Sundays excluded.

One of the great problems confronting your Governor today is the fact that he is required to treat with a host of department heads, boards and semi-independent agencies. It is my earnest hope that we confine the number of departments to a rather liberal 20. Perhaps the members of the Committee will agree that a lesser number of departments will suffice. I hope so! In no event should we exceed, it seems to me, 20 departments. When it comes to the distribution of the duties among these departments, it seems to me that this should be left to the Legislature and the Governor. The task should be left to the Governor working with the Legislature and need not be disposed of in the Constitution.

I have given some consideration to the possibility of our incorporating in the Constitution provision for a Lieutenant-Governor. There are arguments in favor of our having a Lieutenant-Governor. The duties that fall upon the Governor, even today under our peculiar Constitution, are complex and burdensome. A Lieutenant-Governor devoting full time to the task would be extremely helpful. On the other hand, the present arrangement has worked out reasonably satisfactorily, and I personally would be content if this Convention chose to follow precedent in that respect.

The handling of our military affairs has been a matter of particular concern to your present Governor. In my judgment, the Constitution should authorize the Governor as Commander-in-Chief to name a Chief of Staff, subject to confirmation by the Senate. All other officers of the Militia or Guard should be commissioned by the Governor after selection upon a merit basis and according to federal standards. This will give us the kind of modern military set-up that is vitally needed. At the present time we have three constitutional officers in the military division of the State Government, appointed by the Governor, subject to confirmation by the Senate, with apparently life tenure. There have been many conflicts between these

officers, as well as between them and the Governor, since 1844.

I'm likewise convinced that the power to investigate and, when the occasion requires, to remove incompetent or dishonest public officials within the Executive Branch of the Government, should be given to the Governor. The Governor should have inherent power to investigate the activities of officers appointed by him, and their subordinates, during his term of office. This power to investigate should be, it seems to me, a constitutional power vested in the Governor, and not subject to withdrawal by an unfriendly Legislature or, for that matter, enlargement by a friendly Legislature. The power to investigate, if it is to have real meaning, should be accompanied by the power to remove after a proper hearing.

Mr. Chairman, I think that, for the moment, constitutes the conclusion of my remarks.

CHAIRMAN: Thank you very much, Governor. Governor, will you submit to a few questions and discussion?

GOVERNOR DRISCOLL: I'll be happy to submit to any questions.

CHAIRMAN: Members of the Committee, who would like to ask a question?

MR. MILTON A. FELLER: Governor, with reference to the consolidation of the departments, the legislative committee that prepared the 1942 revision consolidated and named the departments in the Constitution itself. The 1944 revision provided that these departments be consolidated by executive order, subject to the approval or disapproval of the Legislature. Which method do you think is better?

GOVERNOR DRISCOLL: I would prefer the latter, although it seems to me that it is not necessary for us to go as far as the framers of the proposed 1944 Constitution went in order to accomplish our purpose. The consolidation of existing departments within the framework of a constitutional provision, limiting the number of departments, may very well be the product of teamwork between the Legislature and the Governor.

MR. FRANK S. FARLEY: Governor, do you believe that the administrative officers should be appointed for a term concurrent with that of the Governor?

GOVERNOR DRISCOLL: I believe that the department heads of the limited number of departments that I have mentioned should, generally speaking, be appointed for a term concurrent with the term of the Governor.

MR. FARLEY: Would you apply that doctrine to the State Militia?

GOVERNOR DRISCOLL: I would apply it to the Chief-of-Staff, very decidedly.

MR. FARLEY: Would you apply it to the Department of Institutions and Agencies?

GOVERNOR DRISCOLL: My inclination would be to apply the rule to all departments. I recognize, however, that in three instances, namely, Institutions and Agencies, Agriculture, and Health, there may be reasonable differences of opinion on this subject. I would prefer uniformity. However, by the same token, I have sought a formula that will permit the three departments that I have mentioned, and the Department of Education, to attract and to keep career men. We want all of our departments, particularly those mentioned, to be operated on a professional basis. In a limited number of departments provision may be made by the Legislature for boards appointed by the Governor, subject to confirmation by the Senate, to assist in the development of policies and to protect professional standards.

MR. FARLEY: Governor, if this Committee determined that a Lieutenant-Governor would be practical, what would be the duties, in your viewpoint, of a Lieutenant-Governor?

GOVERNOR DRISCOLL: First and foremost, to serve in the place and stead of the Governor upon his death, or resignation, or inability to serve as Governor; and to assist the Governor in the management of the most important business in the State of New Jersey today.

MR. FARLEY: Would he have any particular function as far as the Senate was concerned?

GOVERNOR DRISCOLL: I would be inclined not to follow federal practice in that respect.

MR. FARLEY: Governor, do you believe in a pocket veto?

GOVERNOR DRISCOLL: Let me answer your question, Senator, in this fashion—that I would prefer that the veto be accompanied by a message transmitted directly to the Legislature. I believe we should do away with the vest pocket veto. There are occasions when a Governor has no other alternative, under present practice, than to adopt a method that has been commonly referred to as a pocket veto. It depends upon your definition of that term.

MR. FARLEY: Governor, probably this is new, but do you have any views on this question? Suppose a man who has been elected to the United States Senate dies during his incumbency in office. Should his replacement be from the same political party as that to which the deceased Senator belonged? In other words, if you had a Democratic Governor and one of the United States Senators, who happened to be a Republican, died, do you feel there should be anything in the Constitution which should limit the appointment of that particular substitute to, we'll say in this case, the Republican party?

GOVERNOR DRISCOLL: I doubt very much if we should

incorporate such a provision in our State Constitution. I have a conviction on that subject. I'm inclined to the opinion that where the citizens of a State have elected a member of one party to serve them in the United States Senate, and, unfortunately, that member is prevented from serving by reason of death, that the mandate of the people should not be completely ignored. However, from a practical point of view, I think we will all agree that in this distinction between members of the two major parties, we have frequently beat the devil around the bush. There has been a tendency on the part of Republican governors to name mugwump Democrats to public office where there was a requirement that a Democrat be named, in order to meet the technical requirement of the statute; and a similar procedure has frequently been followed by Democratic governors.

Therefore, basically, and having in mind my conviction, I'm of the opinion that if a Governor were required to appoint a United States Senator, he should choose the best man or woman available for that purpose, and that his hands should not be tied so he might be tempted to select a mediocre person of one party merely to meet constitutional requirements.

MR. FARLEY: Governor, do you believe there should be any distinction between the votes necessary to override a veto of general legislation and those required to override a veto of items in an appropriation bill? In other words, we'll say three-fifths, or 51 percent or more, or whether it would be two-thirds—whether there should be any difference as to what would be required to override a veto of line items in an appropriation bill?

GOVERNOR DRISCOLL: I would retain substantially the provision in the present Constitution, permitting a Governor to object to line items in appropriation bills. I would not distinguish between appropriation bills and legislation generally with respect to the veto power or the number of votes required to pass either an appropriation bill or bills generally over the Governor's veto.

MR. FARLEY: What is your attitude concerning the Governor's deferring execution of sentence of a criminal—the death penalty; for instance? Have you any viewpoint on that, Governor?

GOVERNOR DRISCOLL: I find the present procedure reasonably workable. I recommend an entirely separate Court of Pardons or Parole Board. I do not approve of the duplication of duties of the present majority members of the Court of Pardons. I refer, of course, to the fact that the special judges of the Court of Errors and Appeals presently serve on the Court of Pardons.

MR. FARLEY: Do you recommend any change, so far as the Court of Pardons is concerned, relative to the Governor's power—either increased or decreased?

GOVERNOR DRISCOLL: No, I don't recommend any substantial changes at this time. I do recommend that we discontinue the interlocking relationship between the Court of Pardons and the Court of Errors and Appeals.

MR. FARLEY: Thank you, Governor.

MRS. JANE E. BARUS: Governor, you said you thought the main administrative department heads should have terms concurrent with those of the Governor. Do I understand that to mean that you think he should not have the right to remove them at pleasure, as the President does, for instance?

GOVERNOR DRISCOLL: That is a controversial subject. I'm not at all sure that the Governor should have the right to remove a department head appointed by the Governor and confirmed by the Senate, in the absence of some cause for that removal. On the other hand, I do think if the Governor selects the right people, and the Senate confirms the right people, then when the department heads find themselves out of step with the Governor they will not want to remain in the Governor's Cabinet. I believe that if we can reduce our departments to a reasonable number, less than 20—I would hope that we might cut that to not more than 15—that these department heads will be in fact as well in name members of the Governor's Cabinet. I would certainly accept a Constitution that permitted the Governor to remove these policy-making department heads at pleasure, but I don't think that power is essential to the reform which we are seeking.

MRS. BARUS: In one of the drafts there was a regular procedure set up—you must hold a hearing, and have a judge, and you could subpoena witnesses, and so on—so that in a sense it was a trial, and protected the rights of the person who was being investigated. I didn't mean simply saying, "All right—goodbye." I didn't mean that you could remove them without proof of malfeasance, or impeachment.

GOVERNOR DRISCOLL: The Governor should have the power to remove his department heads for cause, subject to the provision that a successor would, of course, require the confirmation of the Senate.

MRS. BARUS: I think it would be interesting, if the Governor wouldn't mind spending a little time on the process of allocation of boards and committee functions under the main department heads. You stated it should not be in the Constitution, but by legislative action.

GOVERNOR DRISCOLL: Well, if there were a constitutional mandate, I know that would be followed by executive and legislative action. I'm convinced that the members of the Legislature, acting with the Governor, could together consolidate the various state

agencies into a limited number of state departments. It would be a substantial task, and my proposal, very frankly, is an alternate to the previous proposal which has been suggested—that the Governor should submit consolidated departments, subject to a veto by the Legislature. I would accept the proposal and would, if I were Governor, assume the responsibility of consolidating these departments. I think it might be less controversial if the people, in their Constitution, said, "We want a limited number of departments," and then left it to the Legislature and the Governor to provide for the consolidation and the change in the form of these departments from time to time as the needs of the State required.

MR. SPENCER MILLER, JR.: Governor Driscoll, you have been discussing this plan for establishing a Cabinet. Is it your thought that there be a specific provision in the Constitution for a Cabinet for the Governor? Would it be spelled out in specific terms?

GOVERNOR DRISCOLL: I want to answer that question in this fashion: It might be helpful, although I don't regard it as necessary. If we have a limited number of departments in the Executive Branch of the Government, I'm convinced that those department heads would automatically become members of the Cabinet. Your problem today is this: it is almost impossible for the Governor, over any reasonable period of time, to meet with all of the responsible department heads. We do not have a room in the State House, other than the legislative chambers, sufficiently large to permit the gathering of all of the department heads and various boards that exercise executive and administrative functions.

MR. MILLER: A second question, Mr. Chairman. . . . Governor Driscoll, in connection with the selection of administrative heads, is it your opinion that there should be a distinction between administrative heads, whether such head be an individual or a single board or commission, depending on whether they exercise administrative or *quasi-judicial* functions?

GOVERNOR DRISCOLL: I would prefer every department to be headed by a single administrator. My studies indicate that is the preferable practice. I recognize that in New Jersey we have developed a fine tradition of citizen service on various boards and councils. I believe that under a Constitution that does not go into too great detail we can preserve that tradition and continue to have a substantial number of advisory councils and policy-developing boards. There is no reason why a flexible Constitution would prevent the Legislature, acting in concert with the Governor, from preserving that tradition. I would, however, confine administrative duties, in contrast to policy-making decisions, to a single individual who would be, at one and the same time, the representative of the Governor and the head of a particular department. A board or per-

son exercising *quasi*-judicial functions should in the exercise of those functions have substantial independence. Decisions should, of course, be subject to appropriate review. We may distinguish between the administrative duties of a person or department and *quasi*-judicial duties. In other words, within a department we may have a board or person exercising *quasi*-judicial authority pursuant to legislative mandate, applying legislative standards. In the performance of these duties we would protect him in the exercise of independent judgment. To the extent that the individual or board performed administrative duties or developed policies he, she or it would be expected to carry forward the policies of the administration as established by the one man directly responsible to all the people of the State by virtue of his election—namely the Governor.

MR. MILLER: Governor Driscoll, while we are concerning ourselves with, and are disposed generally, I think, to recognize the present interest in strengthening the power of the Governor in this State, how do you feel about such a post as the Principal Keeper of the State Prison, a constitutional officer whose appointment was made a part of the appointing power of the Governor in the Constitution of 1844? Is it your judgment that that kind of an officer should be administratively appointed by the director of the institution, rather than included as a constitutional officer in the State Constitution?

GOVERNOR DRISCOLL: I would certainly not include the Principal Keeper as a constitutional officer. The State Prison belongs in the Department of Institutions and Agencies. The Keeper should be a career man or woman appointed in the same manner as other division chiefs in the Department. And on that point, Mr. Chairman, if I may, I should like strongly to recommend that the number of constitutional officers, particularly within the Executive Branch of the Government, be limited to a Governor; and that the Governor and the Legislature be left free to develop such other offices as may be required from time to time to meet the needs of the State. I feel very definitely that it is a mistake to clutter up our Constitution with a great many so-called constitutional officers. By the same token, as I stated earlier, I believe the Legislature is entitled to a constitutional officer, appointed by the Legislature, to insure that the legislative mandates are carried out and possibly to audit the activities of the Executive Branch of the Government.

Perhaps, Commissioner Miller, and Mr. Chairman, I can give you an illustration of my thinking on this point. It seems to me that the Chief Executive, the representative of all the people, is primarily responsible for law enforcement in the State. And yet, as we all know, we have a number of constitutional officers today who have very definite responsibilities with respect to law enforcement—the

Attorney-General, sheriffs, prosecutors, others may be mentioned. I'm inclined to the opinion that one of the limited number of departments I have mentioned should certainly be a Department of Law, and that that Department of Law should have substantial responsibility for law enforcement throughout the entire State. It seems to me that the prosecutors of the pleas, as we now know them, and if continued, should be appointed by the Governor subject to confirmation by the Senate, and should be a part of the Department of Law. There is no need for the continuation of the prosecutors of the pleas, or sheriffs for that matter, as constitutional officers. Of course, we will continue to perform the functions that those men have performed in the hundred and three years since the Constitution of 1844 was written.

MR. MILLER: Thank you, Governor.

MR. CHARLES K. BARTON: Governor, at the outset I want to say that I'm in hearty accord with your lucid reasoning on practically everything. I'm at a loss, however, in one particular instance to catch your viewpoint on the departmental heads. Your theory I agree with heartily—which may not mean anything, of course, but I follow the same line of reasoning. You make an exception of the Education head, Agriculture head, and the Institutions and Agencies head. I think that is so, isn't it—you make that exception?

GOVERNOR DRISCOLL: I said I would be prepared to recognize a distinction between certain agencies of the government that may be characterized as professional in contrast to other agencies of the government that are policy-making. All appointments, however, with the exception of the Auditor should be made by the Governor, subject to confirmation by the Senate.

I would be willing to concede that a Constitution, properly drawn, should be sufficiently flexible to permit the Legislature in the exercise of its discretion to provide for a board or council in a particular department. Where we have such a board or council, appointment to it should be made by the Governor, again subject to confirmation by the Senate. In certain instances, such a board or council might be permitted to submit a panel to the Governor from which he could appoint the head of the department. In other words, there is a willingness on my part to consider points of view that are somewhat foreign to my own on the subject. In every instance, however, administrative power and responsibility should be given to a single individual who would be the executive head of the department.

MR. BARTON: The point I was thinking of, Governor, is this: I have a well-founded feeling for having the terms of department heads run concurrently with the Governor. I think that is a proper theory. And I conceive of the propriety of the Board of Education being in a different category because of the essence of it;

but I'm wondering what the theory is that Agriculture should be placed in a different position than the head of any other board, for instance?

GOVERNOR DRISCOLL: Those who support that position point first to the tradition in New Jersey, and secondly to the fact that that Department is largely confined to professional activities in a particular field.

Uniformity is desirable. All appointments, in my judgment, should be made by the Governor, and the department heads should be given terms concurrent with that of the Governor. However, in the framing of a Constitution for New Jersey, as was the case in the framing of the Constitution in Philadelphia for the Federal Government, I believe we can draw it sufficiently flexible so that if the Legislature should choose, in some instance, to make a provision for a board, that can be done; and if this Convention should decide to adopt that position, certainly I would support it. That is all I'm trying to say.

MR. LEWIS G. HANSEN: I just want to ask one question, Governor. I don't ask it to embarrass you in any way. Why do you advocate that you, as the present Chief Executive, should be disqualified from succeeding yourself as Governor?

GOVERNOR DRISCOLL: That is a question courteous, Judge Hansen. I'm far more interested in the reformation of our antiquated Constitution than I am in any personal service that I may render to the State. I have sought to take a position that would remove all doubt as to my motive.

MR. FELLER: Governor, in strengthening the veto power of the Governor, do you have in mind any definite figure in the number of votes that should be required before the Legislature could override the Governor's veto?

GOVERNOR DRISCOLL: My thinking leads me to the conclusion that a two-thirds vote should be required. The present provision permitting a mere majority to override the Governor's veto weakens the authority of the Governor, lessens the prestige of the Legislature, and is contrary to sound public policy.

MR. J. SPENCER SMITH: I'd like to ask the Governor if he has given any thought to the Lieutenant-Governorship. If the Lieutenant-Governor should not happen to be of the same party as the Governor, assuming they were both elected at the same time, could there be a fellowship and a working partnership between the Governor and the Lieutenant-Governor in regard to carrying on the duties of the Lieutenant-Governor during his period of office?

GOVERNOR DRISCOLL: No, I don't think so. The Governor and Lieutenant-Governor should be elected as a team. I think it would be unfortunate if the Governor were elected from one party

and the Lieutenant-Governor from another party. If we do not have a Lieutenant-Governor, then I would much prefer to have the line of succession go to an officer of the Legislature, rather than to a department head selected by the Governor.

It is to be hoped, and I think we may reasonably expect, that the Legislature will be cooperative in permitting the Governor to choose assistants of his own selection to help him in the administration of the executive duties. These men should be selected by the Governor and considered by the Senate on the basis of their particular talents for particular duties in a specified department, rather than on any qualifications they may have to be Governor. I would prefer, on the other hand, that in the event something happens to the Governor, at least if the successor has not been elected by all of the people, as I think should be the case, that he be selected by representatives of all the people.

MR. SMITH: Doesn't that raise this point, then—if you have a Lieutenant-Governor, what is he to do? That is the point, it seems to me. You say our present system is all right.

CHAIRMAN: I thought Governor Larson said he is going to lay all the cornerstones in the State.

(Laughter)

MR. SMITH: Maybe the Governor would like to do that.

GOVERNOR DRISCOLL: Mr. Smith, the Governor receives more than 50 invitations a week to speak. I wouldn't expect the Lieutenant-Governor to devote all of his time to speaking engagements—there are occasions when he could very well represent the Governor and take care of such engagements. There is an abundance of work in the Governor's office that could be performed by a Lieutenant-Governor, that today must be delegated either to a department head or to my very efficient secretary, or to some other individual. Very frequently our citizens are just not satisfied to be told that the Governor, unfortunately, is occupied in a conference, and to be referred to a department head, or to a member of the Governor's staff. However, experience in other states has indicated that they are occasionally satisfied to talk to the Lieutenant-Governor. It is a nice title.

Furthermore, the Lieutenant-Governor could become the coordinator of administrative policies. There are many administrative duties that need attention that, if performed by the Lieutenant-Governor, would give the Governor more time for the consideration and development of major policies.

MR. SMITH: I can understand that, if he is of the same party and elected with the Governor, but I'm assuming that we will vote individually for both. If the Lieutenant-Governor is of a different party, then what are we going to do with him?

GOVERNOR DRISCOLL: If we accept your assumption, and I do not, you present one of the hazards of a democracy, Mr. Smith. We have a great many folks in this country of ours who praise the theory of democracy and pronounce their loyal support for our republican form of government, but are just a little bit afraid of democracy in practice. I'm willing to take the risks that accompany our form of democracy in the Republic. Occasionally we will have a little difficult time, but on the whole our system will work out very nicely.

MR. SMITH: I have this in mind. You are the Governor and you can succeed yourself, and you have a Lieutenant-Governor of a different party who would like to be Governor. Is it human nature—at least I would think so—that the Governor would afford him every opportunity to do what you said? I'm simply trying to bring out in a practical way what you are speaking of now.

GOVERNOR DRISCOLL: Mr. Chairman and members of the Committee, I'd like to make this point: I'm not pressing for the changes that I have recommended, in the sense that I believe these changes must be made or else we will not accomplish our purpose; nor have I stated the reforms that seem to be of some importance in the order of their importance. I can see where there is ground for reasonable differences of opinion on many of the suggestions made, and particularly with reference to a Lieutenant-Governor. That is certainly not the most important change I have suggested. In fact, I would be inclined to the opinion that it is perhaps the least important of all the changes.

The most important recommendation that has been made, in my judgment, has to do with first, strengthening of the Governor's power of appointment, with particular reference to the appointment of cabinet officers or department heads—call them what you will—for terms that are to run concurrently with the term of the Governor; and secondly, to provide in the Constitution for a limited number of departments so that we may have a workable family group. Those two proposals, it seems to me, are of very considerable importance. Strengthening the Governor's veto power might very well follow in order of importance. Certainly the term of the Governor would follow, as well as the right of succession.

MR. FARLEY: For the purpose of the record, Governor . . . You speak of these appointments of administrative officers running concurrently with the Governor's term—I understood you to say, originally, with the confirmation of the Senate. Is that correct?

GOVERNOR DRISCOLL: Yes.

MR. FELLER: I have just one question with reference to the Lieutenant-Governor. Do you think there would be any public reaction, unfavorable reaction, if this Convention decided on the

provision for a Lieutenant-Governor, to provide that both the Governor and the Lieutenant-Governor be elected by the same ballot, a ballot for two, so that we will not have one of one party and one of another—similar to the way they ballot for the election of President and Vice-President of the United States?

GOVERNOR DRISCOLL: Well, there is bound to be some criticism of whatever this Convention does. My instinct is not to support that suggestion—although my mind tells me that it has considerable merit—to avoid the very questions raised by Mr. Smith. On the whole, I think the public would support your suggestion.

MR. MILLER: Governor, would you like to say just a word about the question of the Executive budget?

GOVERNOR DRISCOLL: I have no particular objection, Commissioner Miller, to the present method of handling the budget. I suspect you are thinking in terms of the provisions in certain other state constitutions where either the legislature prepares a budget which the governor reviews and may approve or disapprove within a period of time, or where the governor in effect prepares the budget and the legislature either approves or disapproves. I think, on the whole, that question should be left to legislation. I, for one, am quite content to submit a budget message to the Legislature and then have the appropriate committee representing the Legislature consider adopting or rejecting the proposal either in whole or in part.

CHAIRMAN: I am the only one who has not yet asked any questions. However, I shall be brief. The one thing that has confused me in your statement is something along the lines that Senator Barton said. You mentioned that you felt there ought to be some constitutional limitation on the number of departments. You suggested the figure 20, and I am not discussing that, but the one thing that is definitely confusing is what constitutes a state department. Now, we have the Department of Conservation—we call it that. Well, if you sit in an appropriations committee and watch the parade for Conservation—it lasts for days. I don't know the exact number, but I think there are 24 sub-departments. The Department of Economic Development has sub-sub-sub, and the Department of Education. . . . What constitutes a department?

GOVERNOR DRISCOLL: The question you raise is, of course, as you suggest, a matter of definition. Fundamentally, however, you are raising a question that has to do with administration.

CHAIRMAN: That is right.

GOVERNOR DRISCOLL: A department is a division within the Executive Branch of the Government, administering laws and developing policies that presumably have a close relationship, one to the other, headed by a single individual who is, at one and the same time, the chief executive of that department and the repre-

sentative of the Governor. He may be assisted by a board or a council concerned with the development of policy and interested in the various phases of the work of that department. Let me see if I can give you an illustration that may or may not be pertinent.

At the present time we have the Department of the State Police, headed by a single individual, interested in the important task of law enforcement. We have the Department of Alcoholic Beverage Control, interested in another phase of law enforcement. We have a Tenement House Commission, interested in another phase of law enforcement. The latter two agencies also have certain policy-making authority. Conceivably, we can consolidate those agencies and others into a Department of Law and Public Safety, following somewhat the pattern that has been adopted by many of our municipalities. The end result of such consolidation would be a single department, headed by a single individual, although the career undersecretary, to borrow an expression that is not completely accurate as applied to the state service in the United States, would be in charge of the various divisions within that department. But a single man would be responsible for the general over-all operation of the department. Now, if there is good administration in that department, the appropriations committee might be—it should be—spared (except when it calls for additional witnesses) the parade of witnesses testifying as to the particular needs of an individual division within a well-integrated department. I would hope that with such consolidation we could promote, for example, the work of law enforcement by not only the quick exchange of ideas, but by the quick exchange of manpower and womanpower from one division to another as the particular needs of our State and its subdivisions require. We could eliminate duplication of effort, consolidate our activities, and adopt uniform procedures.

CHAIRMAN: Thank you for that very complete description of a department. I am not trying to be tricky; I'm trying to think in terms of the language in a revised Constitution. It seems to me it might be dangerous, we might be limiting ourselves, we might be subjecting ourselves to a tremendous amount of legal interpretation, if we say "There shall be no more than 'X' number of departments within the State," because somebody might say it was just a subterfuge that you had "X" departments, and underneath that you had a parade of divisions,—10, 20 other departments. I'm trying to simplify the document.

I am wondering, when we think in terms of departments—and this is the essence of the executive function, just as you said—you want to be able to nominate the people you want; at the same time, in relation to the Legislature, you want to be able to reshuffle your departmental functions as the years go by to meet the changing

economic conditions. The more I have listened to and discussed this subject, the more it seems to me that it probably isn't necessary to mention it in the Constitution. Let that be worked out—the number of departments and their functions—by this teamwork between the Governor and the Legislature.

GOVERNOR DRISCOLL: Well, Senator, in theory you may be right; in practice there have been too many of us who have not adhered to the principle that, I suspect from your statement, you believe in. The result is to be found in the record of today, namely; there are better than a hundred individual departments, agencies, and commissions with whom the Governor must work if the program of the Executive Branch is to progress. Accordingly, I would in the Constitution limit the Governor and the Legislature to the extent that I would be inclined to say that within the Executive Branch of the Government there should be no more than 20 principal departments, and that all the functions that may properly belong to the Executive Branch should be distributed within those 20 divisions, or such a lesser number of departments as the Legislature and the Governor shall mutually and from time to time agree upon.

That means that as we are confronted with new problems we would be forced—"we" being the Legislature and the Governor—to ask ourselves: To what old, established agency is this new function of government most closely related? Is this a problem of law enforcement? Is this a social problem? Is this a problem of public health? And if it is, then let us allocate this new duty to that particular department within the Executive Branch where it can be strengthened by the experience of the old activity and the administrators of the old activity, and at the same time bring, perhaps, a new point of view to the old activity.

May I, perhaps, give you an illustration, and in giving this illustration I am not reflecting in any manner upon the performance of important duties by the men and women who are presently in the state service. In fact, I assume a little bit of responsibility for a violation of a principle that I now support. During the days of the depression, one of the problems confronting the State Government was that of aid for men and women who were unfortunately thrown out of work through no fault of their own. We tackled that job on a hit-or-miss basis, and finally formalized our activities in our Municipal Aid Department, now a division of the Department of Economic Development. Perhaps, if we had had a limitation on the number of departments that could constitutionally be created, we would have been forced to consider the experience in the field of social welfare of the Department of Institutions and Agencies and allocated this new duty to that particular department, where they

were already engaged in old age assistance and many other social activities.

CHAIRMAN: I have one more question, as far as I am concerned, and that is this: A little while ago you spoke of a distinction between technical career heads of departments and policy-making heads of departments. Do you think it might have any merit to designate in the Constitution those heads of departments who might be considered the Governor's Cabinet?

GOVERNOR DRISCOLL: It might, but again, it seems that is a matter of detail.

CHAIRMAN: I am thinking in terms of the Federal Constitution.

GOVERNOR DRISCOLL: I am aware of that, and yet, there is considerable debate today as to whether or not the so-called Cabinet members adequately represent all the functions of the Federal Government and whether there should be a reshuffling of the Cabinet designations to meet modern requirements. I would, therefore, hesitate to make that recommendation. It seems to me that we ought to preserve great flexibility so that 50 years from now we could have a whole new set of titles, if necessary, that would realistically represent the functions performed by those individuals, rather than have a set of titles that are required by the Constitution and then have individuals doing entirely different tasks.

CHAIRMAN: Are there any other members of the Committee who wish to ask a question?

(Silence)

CHAIRMAN: Thank you very much indeed for coming here, Governor Driscoll.

MR. SMITH: I move a hearty vote of thanks to Governor Driscoll.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: I will call an adjournment for five minutes until Governor Hoffman arrives.

(Five-minute recess. The session resumed at 3:45 P.M.)

CHAIRMAN: The meeting will please come to order.

Thank you very much, Governor Hoffman, for coming to meet with us, particularly in view of the personal difficulties you have had in the last day or two. What we have done previously is to turn the meeting over to the star witness, which you are at the moment, and then, if you are willing, to have you submit to a few questions and have a general discussion. You have the floor, sir.

FORMER GOVERNOR HAROLD G. HOFFMAN: I'll be very happy to.

I'm glad to have the opportunity to appear before the members of the Committee to give you my personal experiences and some thoughts that I have been able to develop in my public life. I don't know in particular just what matters you are considering, but I have gained the idea you are largely concerned with the powers of the Governor, his term of office, and other things that might well come within the constitutional provisions of interest to the Executive Department.

CHAIRMAN: Excuse me, Governor. May I just explain to you that our particular Committee is charged with looking into those sections of the Constitution that concern the Executive, civil officers, and the militia?

GOVERNOR HOFFMAN: Well, I think possibly the term of Governor is the thing that would be of primary importance. It seems to me that is one of the things that has been receiving the consideration of the Committee. I thought, while I was in office, that a three-year term for the Governor was too short. Particularly someone coming from outside the government and serving in that office would find that during that time he hadn't had an opportunity really to make a study and take action to develop and carry out a program. Of course, in all these cases a three-year term is far too short for a good Governor, and far too long for a bad one. There appears to be no way of making any determinations in advance.

I remember a number of years ago talking to Bob Johnson, one-time Secretary of the Senate, and I asked him about that three-year provision and the limitation of one term for the Governor, and he explained it. He said, "The time the original Constitution was drafted, there was a lot of Quaker influence in New Jersey, and," he said, "the Quakers, of course, were very jealous of the power of any individual." He went on, "They were also good business men and they figured out that a Governor who couldn't get his in three years wasn't smart enough to be re-elected."

(Laughter)

But I think that generally, when you are considering drafting the Constitution—I know this thought has been presented so often that it should be very simple—you should establish the guideposts of government within our State. It would seem to me that where there is any question, the thing that would be most likely to meet with the approval of the people—and after all, the delegates at the Convention have been elected as the representatives of the people—would be to come as close as you can to the comparable clause in the Constitution of the United States, which, of course, has stood the test since the 18th Century. I suppose it is the best, and cer-

tainly the most respected constitution, and the oldest in existence.

I have thought that the Governor's term should be for four years and that he should be permitted to become a candidate for reelection for one additional term, and that would establish a limitation of eight years. I think there is some inherent danger in all of these things. I know there are a lot of people who say you can trust the will of the people, and that you can trust the elected representatives of the people. However, it would seem to me that in New Jersey where the power is conferred on the Governor to name the members of the judiciary—not elected as they are in so many of the other states—that even in two consecutive terms, which would run eight years, the Governor would within that period have appointed the head of every state department and every judicial office in the State. Although we don't like to think it would ever be used for that purpose, it is quite possible that within a period of two successive terms the Governor, if he willed to do so, could build up a very strong political organization.

It was apparent to me that there were restrictions upon the powers of the Governor. I know in my particular case—and I cite this without any personal thought, because he happens to be one of my very good personal friends—but when I was elected Governor, the Attorney-General, for instance, was a member of the opposite political party, appointed by a prior Governor, and his term extended beyond my term in office. During that entire period in office, therefore, I had to rely for my legal information and advice upon someone who was not only appointed by another Governor, but who was appointed from an opposite political party and was in no sense responsible to me, and who could not, of course, look to me for reappointment. There are too many other cases where the terms of some executive office heads and some executive department heads would overlap the term of the Governor, and I think that was a very great handicap.

I think that the Governor's veto power should be strengthened and that a two-thirds vote of the Legislature should be required for the passage of legislation over the veto of the Governor.

I don't know whether this comes within the scope of your deliberations or not, but I also think that the Court of Pardons should be abolished. The powers of pardon and parole should rest in some appropriate state agency—the Department of Institutions and Agencies—with the Governor having the power in unusual cases, and it should only be used in unusual cases, of pardon or executive clemency, and then only after full public hearing of the matter.

CHAIRMAN: Do you want to speak on the power to appoint department heads?

GOVERNOR HOFFMAN: I think the Governor should have

the power to appoint the heads of all executive and administrative departments, with confirmation by the Senate, with the possible exception of the State Auditor. It seems to me the State Auditor should be named by the Legislature. He should be responsible to the Legislature, so that he might give them assurance that the funds that they had appropriated had been properly expended.

MR. BARTON: Do you put the State Treasurer and the State Comptroller in the same category as the Auditor?

GOVERNOR HOFFMAN: Well, quite generally, I think that the present Constitution provides for certain appointments—the Comptroller and the Treasurer—by the Legislature, but I'm inclined to think that the Governor should have the power to appoint all those officers. They should all be appointed by the Governor, by the authority of the Constitution rather than the Legislature, with the exception, as I said, of the State Auditor.

MR. BARTON: Governor, would you comment on the term of office of these administrative heads, the heads of departments appointed by the Governor?

GOVERNOR HOFFMAN: Coincidental with the term of the Governor.

CHAIRMAN: Do you want to speak on the militia, the executive set-up of the militia?

GOVERNOR HOFFMAN: Well, aren't we becoming largely dependent upon the Federal Government for appropriations for our militia?

CHAIRMAN: That is true. I'm thinking more in terms of our machinery, that the State has to initiate.

GOVERNOR HOFFMAN: I think that broad power should vest in the Governor. I'm inclined to think there might be some abuse of that power if the Governor were minded to make social appointments, rather than appointments of men who have made a career of military service.

MR. FELLER: The present Constitution makes it mandatory upon the Legislature to organize the militia, and the 1944 revision, which was rejected, left it up to the discretion of the Legislature. Which do you think is the better practice?

GOVERNOR HOFFMAN: I would favor the Executive, the Governor.

MR. FELLER: The provision in our present Constitution uses the word "shall" and makes it mandatory upon the Legislature to make the necessary provision to organize the militia; but in the Constitution that was rejected it made it permissible, it left it to the discretion of the Legislature to do that. Do you think the Constitution should contain a mandatory provision?

GOVERNOR HOFFMAN: I think it should be mandatory, yes.

MR. MILLER: Governor, do you think that provision should be made in this new Constitution for a Cabinet for the Governor?

GOVERNOR HOFFMAN: Yes, I believe that would be very helpful.

MR. MILLER: Have you any thought as to what should be the proper division of functions? I'll clarify that by asking, do you think it is possible to enumerate specifically in the Constitution how many functions of the State Government there should be? Should there be a floor or ceiling as to the number and, generally speaking, should the functions be spelled out or be implicit in the document?

GOVERNOR HOFFMAN: I think there should be some limitation upon the number. You wouldn't want it to get too unwieldy. It would be, in effect, the official family of the government. They should be the heads of the Executive Department, and I think possibly it could be divided into fiscal and welfare.

MR. MILLER: Governor, the problem of expanding or increasing the power of the Chief Executive carries with it, among other things, perhaps increasing the number of appointments of constitutional officers. Is it your judgment that they should be rather severely limited, or extended? I particularly have in mind the fact that the Principal Keeper of the State Prison is a constitutional officer and, contrary to sound administrative procedure, he is responsible not to the administrative head of the department in which that service is performed, but is appointed by the Governor. Would it be your judgment that the number of appointments of such constitutional officers should be limited?

GOVERNOR HOFFMAN: I believe that all persons who are appointed by the Governor should be responsible to him.

MR. MILLER: Should an administrative position like the Principal Keeper be an administrative officer appointed by the Governor, or should he be appointed by the Commissioner of Institutions and Agencies?

GOVERNOR HOFFMAN: I would say, under our present setup, that is one of the offices that should come under that particular agency of the Executive Department, and not be a constitutional office. It is very unwieldy to have an official who comes within the framework of an agency responsible not to the commissioner, or the executive or administrative head of that particular agency, but to some other individual, even though that individual be the Governor.

MR. MILLER: Would you like to say a word about the question of the executive budget?

GOVERNOR HOFFMAN: I think our present procedure is very complicated. It may have been simplified in recent years since I have been away, but I think it has been rather a farce in the State Gov-

ernment that a Governor who has just been elected has a draft of a budget handed to him and is supposed to submit it immediately to the Legislature, when he hasn't had the time to make his appraisal and to make his determinations. It always seemed to me rather ridiculous that the Governor and the Governor's aide should develop a budget and then have the Appropriations Committee of the Legislature go all over the same ground again. It would seem to me there might be some way for a joint consideration and development of a budget by the Executive Department and the Legislature. If I could make a little off-the-record observation. . . .

CHAIRMAN: Off the record.

(Discussion off the record)

CHAIRMAN: I'd like to ask you a question on the record. Governor Hoffman, you have been commenting on the present procedure with regard to the state budget. Is there anything in regard to your ideas that you feel should be made a part of the proposed revised Constitution, or do you feel that such changes might better be left to legislative determination?

GOVERNOR HOFFMAN: Well, I think you will have to prescribe in the Constitution for the method by which state appropriations shall be made. I think it would be well to establish the framework within which they should be made, rather than to subject that matter to the changing whims and caprices of successive Legislatures.

CHAIRMAN: Does anybody else wish to speak on the question of the budget?

(Silence)

MR. FARLEY: Governor Hoffman, what is your attitude about a Lieutenant-Governor in the new Constitution?

GOVERNOR HOFFMAN: I haven't given too much thought to it. It seems to me we have gotten by pretty well without creating that new job in the State of New Jersey. I don't think it is essential, unless the purpose would be to bring us in line with possibly a majority of the states that have a lieutenant-governor. The lieutenant-governor is generally supposed to share the responsibility and the work of the governor. I think you will find that in practice he generally turns out to be a social adjunct to the Executive Department.

MR. FARLEY: Governor, what is your attitude about limiting the time allowed for confirming nominations sent by the Governor to the Senate?

GOVERNOR HOFFMAN: I think that that possibly should be 30 days.

MR. FARLEY: No more questions.

MRS. BARUS: To go back to the question on the functions of the pardon and parole board, I'd like to state what I think it is, and then maybe you will correct it. It seems to me that the Governor should have executive clemency, and that, presumably, would refer only to persons condemned to death, or a very severe penalty. That is quite different, isn't it, from parole? I had always been told that parole was something else—that being paroled from an institution should be determined by the specially trained people who were in charge of the institution and who knew all about the case.

GOVERNOR HOFFMAN: There is a difference between pardon and parole. This being a common-law State—and that is one of the things that is peculiar to New Jersey—pardon had been held as one of the great powers or rights of the king. It was the power of pardon which gave him power over the life and death of his subjects, and that continued down in New Jersey. There was an opinion by the late Chancellor Walker in which he said, however, that in New Jersey that power had been refined and diluted; we restricted the power by putting in with the Governor certain members of the court who would also pass on both pardon and parole.

When a person is paroled he is released from confinement, but it generally is considered that he is continued under the custody and supervision of certain officials of the State. A pardon is supposed to wipe out the criminal record; generally it should be granted only where evidence might be presented at a later date that the person had not committed the crime of which he had been convicted. I think it might possibly be granted in other cases, too, where persons, perhaps in their youth, have committed a crime, but since their release from custody have conducted themselves as very able citizens of the community; and in some cases it is wholly considered to be an act of mercy when a person is pardoned. I don't think that Governors in their busy lives have full opportunity to go into all of these cases, and undoubtedly they make a lot of mistakes.

MRS. BARUS: Would you agree, then, that paroles should be handled by the technical people who are in charge of the institutions, where they really study the case much more intimately?

GOVERNOR HOFFMAN: Yes.

MRS. BARUS: It seems to me we are all—at least I know I am—a little confused about this constitutional officer to be chosen by the Legislature, which apparently everyone agrees on. Sometimes he is referred to as the Comptroller, and sometimes the Auditor, and sometimes they talk of the Treasurer as being one of those necessary officers. Whatever they call them, the idea is, isn't it, that there should be somebody who can check up on the carrying out of the legislative mandates, and who also can post-audit the

expenditure of money authorized by the Legislature? He might be called the Auditor; he might be called the Comptroller. From your point of view, I think, if I understood you correctly, there should be one officer who is the representative of the Legislature and acting as their watchdog over the Executive?

GOVERNOR HOFFMAN: Over the expenditure of the appropriations they have made and for which they are responsible. I can't at the present moment think that the office of Comptroller is important enough to be included in the Constitution since, apparently, we have been doing without the services of a Comptroller.

MRS. BARUS: As I understand it, the Comptroller has a right to investigate the actual carrying out of the legislative directions on a broader basis than just the expenditure of money. The Auditor can do nothing except go over the accounts and say "This is honest," or "This isn't, he has been robbing the till."

GOVERNOR HOFFMAN: At the present time we don't have a Comptroller in the State of New Jersey.

CHAIRMAN: We have a Comptroller by title only.

GOVERNOR HOFFMAN: But not by appointment.

CHAIRMAN: In fact, the Commissioner of Taxation and Finance, I believe, receives a salary as such, and also has the title of Comptroller, but he fulfills none of the functions of Comptroller. I see the gentleman in the room and if he disagrees with my statement I hope he will deny it. . . . He does not deny it. I believe that is correct.

MR. FARLEY: Governor, I'd like to ask another question. In our present Constitution there is a provision that in the event of the death of a clerk or surrogate the vacancy shall be filled by the Governor. Do you think that should be a feature of the Constitution, or do you think the process of filling the vacancy should be left to the Legislature?

GOVERNOR HOFFMAN: I think the Legislature.

(Discussion off the record)

MR. FARLEY: It says surrogate and clerk. No provision is made in the Constitution about the sheriff.

GOVERNOR HOFFMAN: That is a legislative provision. The Governor does name the sheriff.

MR. FARLEY: The Governor does nominate, but you are of the opinion that it should be left to the Legislature rather than put in the Constitution?

GOVERNOR HOFFMAN: I think so.

MR. SMITH: Following up Senator Farley's question about the Lieutenant-Governorship. . . . There has been quite a little discussion, and it has revolved more or less around this thought: If we

do have a Lieutenant-Governor, what would his duties be? If he doesn't preside in the Senate, as he does in most states, and if he should happen to be of the party opposite to the Governor, would the Governor want to delegate any duties to him? If he were of the same party as the Governor, and they were in fellowship together, then they might get along very well.

Then, following that line of reasoning, in order that there might not be any question of rivalry—that is, the Lieutenant-Governor getting this assignment and then becoming a candidate against the Governor, if he had the power of succession—do you think that would be overcome in the Constitution, if we do agree to set up a Lieutenant-Governor, were we to provide that a Lieutenant-Governor could not become Governor except after having served as Lieutenant-Governor for, say, eight years, or something of that sort? You would eliminate the human equation, and the Governor could then feel free to assign him any duties he wanted to, because at the end of his term he would be through.

GOVERNOR HOFFMAN: I don't know that the restriction should be made a constitutional mandate. Personally, I have never been able to get myself very much worked up about the importance of a Lieutenant-Governor. Unless the Lieutenant-Governor should also become the President of the Senate—and then, of course, he would have some powers—I think you would find that if you provided for a Lieutenant-Governor, he would wind up as almost solely a social accessory to the Executive Office.

MR. BARTON: You spoke of the surrogate, the county clerk and the sheriff. Do you think they should be constitutional officers?

GOVERNOR HOFFMAN: No.

MR. BARTON: There is, I would say, a prevalent idea about the breadth of the powers of the Governor. I think most people share in that opinion; you yourself so indicated—the power to appoint department heads with terms to run concurrently with the Governor, and power in a number of other phases of our State Government. The idea is to give the Governor more powers. And then you spoke, and I thought very aptly so, of the inherent dangers, meaning, I deduce, that the more power a man gets, naturally the more he wants, and the more he would love to retain it. Do you think that the . . . I'll put it this way: Which side is the weight of propriety on, to give him more power and take that risk?

GOVERNOR HOFFMAN: I think, of course, that in broadening the powers you take a chance, to use a phrase of the day. I think that in giving the Governor more authority we are possibly putting ourselves in line with the majority of the states. But it all depends. I think we will all agree that possibly one of the finest forms of government would be a monarchy, if you had some assurance that

your monarch was always going to be a beneficent monarch.

I think I can explain it in this way. You can give the Governor so much authority that eventually he can control the Legislative Branch of the Government. I'd like to give this little example. Suppose as Governor I appoint a State Highway Commissioner; I appoint a Commissioner of Banking and Insurance; I appoint a Commissioner of Motor Vehicles. We'll say that having appointed these men, I have no power or authority to remove them from office. Senator Jones goes to the Highway Commissioner, and the Highway Commissioner agrees to give him the appointment of every highway employee in his particular county; he goes to the Commissioner of Banking and Insurance, who gives Senator Jones virtual control of all the banks—we are, let us say, in the period when I was Governor; a lot of the banks were in difficulties—naming of trustees, the placing of insurance, and so on. He goes to the Commissioner of Motor Vehicles and gets the appointment of all motor vehicle agencies, and so on. As it is now, where we have diversity of appointment, that in a way can be done. But if a Governor can say, "Commissioner Miller, I don't want you to appoint anybody in Camden County unless I say so; and you Commissioner Brown," and so on—then he sets up control. As a member of the Legislature Senator Jones can't do a thing, he can't get a thing. He has no power, no influence at Trenton, except as it is exercised through the Governor; and the Governor controls him and says, "If you don't vote for this bill I want, and if you don't vote to confirm this nomination I have made, you are out of luck—you have nothing." You can give the Governor so much power—well, you can give him enough power—that he can usurp the powers of the Judiciary as well as the Legislative Branch of the Government.

MR. BARTON: Hasn't that been considered the safety valve for having one term?

GOVERNOR HOFFMAN: That is one of the things that has been considered, I think. As it is today, though the Governor actually doesn't have enough authority, I think possibly one of the most important things is to give some thought to the Governor's veto.

CHAIRMAN: You think it should take a two-thirds vote of the Legislature in order to override the veto?

GOVERNOR HOFFMAN: The Governor's veto to me is meaningless—yes.

MRS. BARUS: On this question of the power of the Governor, it seems to me that in the world of today we have to have powerful governments. We can't run the complex business of the State without power. The thing that is dangerous, in my opinion, is not

power, but irresponsible power; and with all this alignment of the departments, and putting responsibility clearly on the Governor, he stands out before everyone in the State as *the* responsible person. The trouble with our present system, it seems to me, is that nobody can have responsibility at this time because it is so dissipated among so many different administrative areas.

GOVERNOR HOFFMAN: That is true, and I think there should be some measure of correction; but also, you have to guard against executive authority becoming executive tyranny. Therefore, I think that you wouldn't want to give the Governor an arbitrary power to remove from office, without giving a department head perhaps some recourse to the courts.

MR. FRANK H. EGGERS: Governor, don't you believe that the people would cure an irresponsible exercise of power?

GOVERNOR HOFFMAN: Well, sometimes it is our thought that the public is smart, and at other times I doubt it. I think the rule should be that the—you see, you can build up power in the hands of the people who are not elected by or responsible to the people under our present system. Therefore, you might just as well give the people a fair measure of power; you may better give a fair measure of power to a person who is elected by and responsible to the people.

I think eventually the people would cure any situation that was found to be evil. Nevertheless, you can get so much power in the hands of one man that it would be very difficult, under our system in New Jersey—I don't think anyone would deny, for instance, that our primary elections today represent a so-called party organization vote, rather than the vote of the people—and if you put it in the power of any official to say, "You have got to be for this man or you have to be against that man, or you are out," then you are not actually leaving much in the hands of the people. Of course, the people themselves are not exercising the privilege that is theirs. The public is largely to blame, perhaps, and we often say today that the people get just about as good a government as they deserve, because of their failure to exercise, in so many cases, their right of franchise and the other rights they have.

MR. FELLER: Governor, assuming there is a provision inserted in this new Constitution giving the Governor the right to appoint the administrative and executive heads of the State Government, and these officers are to serve concurrently with him, do you think the Governor, by the same token, should have the power to remove these appointees at any time?

GOVERNOR HOFFMAN: I think that all appointments would require the confirmation of the Senate, and should also receive the confirmation of the Senate for removal.

MR. MILLER: Governor Hoffman, I wonder whether you would agree with the statement that has sometimes been made that the Governor of New Jersey today has too much power over little things and not enough power over important things?

GOVERNOR HOFFMAN: Well, I think that the position I have generally held would support that. I think, for instance, that when the Governor's power of veto is weakened, as it is in New Jersey, it might be said that he doesn't have any power over big things. But I have also found that in a lot of little things the Governor doesn't have any power either.

MR. BARTON: Along the line of thought of Commissioner Miller, about the power of the Governor over big things—and of course, I consider the appointment of the judiciary the greatest and most important—it is generally accepted as a fact that the Governor of New Jersey has far greater power than almost any other governor in any state in the Union as to the appointment of the judiciary. Is that so, to your knowledge?

GOVERNOR HOFFMAN: I think so. And then, as it is set up now in New Jersey, the Governor can appoint a butcher, a baker, or a candlestick maker as a member of New Jersey's highest court. I don't know whether the proposal has yet been made, but speaking about the judiciary, I think it is something that is worthy of consideration, and that is that appointments to the higher courts should be limited to persons who have served a certain number of years in the lower courts. In other words, we should get career judges, rather than picking some fellow from the corner, whose chief attainment in life has been making a lot of money, and building up a big practice, and then he wants to end up his days by serving on the Supreme Court, or whatever the highest court may be. If he wants to be a career judge, let him work his way up through the courts in order to attain the higher post.

CHAIRMAN: I'd like to ask one question. Governor, to what extent do you think the Constitution should definitely state anything concerning the number of departments there should be in the Executive Branch? My point is, should the Constitution mention it at all? If so, should there be a limit on the number, and should they be designated by name?

GOVERNOR HOFFMAN: I don't think that you could very well designate by name. I think, in drafting a new Constitution, the thought is going to be to write a document that is going to be our fundamental law for many years to come. We can't project our thoughts into the future. We don't know what the future needs may be. I think a lot of things of that kind may well be left to the Legislature. The Legislatures will be constantly changing to keep abreast of popular thought, and I don't think it is particularly

important that in the Constitution we should establish something that we could call, let us say, the Department of Conservation and Development, when ten years from now we may want to call it the Department of Trees and Little Fishes. I think we might set up, without names, certain functional duties for these departments—certainly you would want fiscal, conservation—but I think it might be broad without putting any particular limitation on the number.

CHAIRMAN: Does anybody else have any questions?

MR. BARTON: Governor, when the departments are set up by the Legislature, they will be subject to this policy—that these heads will be selected by the Governor with the advice and consent of the Senate?

GOVERNOR HOFFMAN: Yes.

CHAIRMAN: Anything else?

(Silence)

CHAIRMAN: Governor Hoffman, would you like to make any further statement?

GOVERNOR HOFFMAN: I don't know of anything else. I'll be glad to attempt to answer any questions.

CHAIRMAN: We seem to have run out of questions. . . . I want to thank you very much indeed for coming down here. We appreciate very much your coming.

MR. SMITH: I move a vote of thanks to Governor Hoffman for his appearance here.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

(The session adjourned at 4:45 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, June 25, 1947

(Executive session)

(Minutes)

A meeting of the Committee on the Executive, Militia and Civil Officers was held at 10 A. M., Wednesday, June 25, 1947. Those present were Chairman Van Alstyne, presiding, Barus, Eggers, Hansen, Miller, S., Jr., Smith, J. S., and Walton.

The Committee decided to start work on the provisions of the Executive Article, with a view to passing on those sections about which there is general agreement. The Chairman emphasized that the votes taken during these preliminary discussions should not be regarded as official or final. The material tentatively agreed upon will be referred to Mr. William Miller for drafting and resubmitted to the Committee for further consideration.

Article V, par. 1 of the old Constitution (Art. IV, Sec. 1, par. 1 of the 1944 draft) was approved unanimously.

Article V, par. 4 (Art. IV, Sec. 1, par. 2) was approved unanimously.

Article IV, Sec. 1, par. 3 of the 1944 draft was approved, with a direction to the technician to re-word the phrase on "position of profit" to make it clear that the reference was to governmental positions and not to those of private business.

Article IV, Sec. 1, par. 4 of the 1944 draft was approved unanimously.

Article IV, Sec. 1, par. 5: It was agreed unanimously that the Governor should have a four-year term.

Judge Hansen moved that the Governor should be permitted to succeed himself for one additional term. Motion seconded. Mayor Eggers moved to amend the motion to allow indefinite succession. Amendment seconded. After discussion the motion was withdrawn, since it was felt that this matter should not be discussed until all members of the Committee were present.

Article IV, Sec. 1, par. 9, of the 1944 draft was unanimously approved.

At this point Mr. Edward Gilroy brought in a message from Governor Edge. The Governor regrets that his absence from the

State prevents his appearing in person before the Committee. He would like, however, to submit a brief on his opinion about the Governor's right to succeed himself. Senator Van Alstyne replied that the Committee would be glad to receive the brief, the deadline for all such communications to the Convention being July 7.

Article IV, Sec. 1, par. 10 [of the 1944 draft] was approved with the following exceptions:

1. The exact wording of the first sentence was deferred until after consulting with the militia officers.
2. The old wording on the power of the Governor to call special sessions of the Legislature was retained.
3. The old wording on the *ad interim* appointment power was retained.
4. The last sentence was eliminated.

[At 11:00 A. M. the Committee adjourned to the Convention Hall to receive Governor Moore, who laid his suggestions for constitutional changes before the Committee and answered their questions. Senator Farley and Judge Feller joined the Committee at this point. The Chairman expressed the appreciation of the Committee to Governor Moore.

At 2:00 P. M. the Committee met with Brigadier-General James I. Bowers to hear his views on the Section on the Militia. After General Bowers' speech and the discussion period the Chairman thanked him for giving his time to the Committee.]¹

The Committee reconvened in business session. It was decided to sit until 4:00 P. M.; to reconvene immediately after the public hearing on June 26, and work until 4:00 P. M.; to convene on Tuesday, July 1, immediately after the general Convention session and work until 4:00 P. M.; and to convene Wednesday, July 2, and sit from 10:00 A. M. until 4:00 P. M. No session of the Committee will be held on Thursday, July 3.

There was a discussion of the Governor's veto power. Some members of the Committee expressed the opinion that the new Constitution should require a two-thirds majority of both houses of the Legislature to override the Governor's veto. Others favored a three-fifths majority, while others preferred to leave the simple majority provision as it now is. Judge Feller called attention to the fact that a majority of the states and the Federal Constitution require a two-thirds majority. Chairman Van Alstyne stated that he felt that New Jersey had its own particular problems and its own special situation to deal with, its Legislature being the smallest legislative body in the country. Senator Farley stated that as a practical matter it is ex-

¹ The record of these appearances follows these minutes.

tremely difficult to muster enough votes to override a veto, even under the present Constitution.

After this discussion it was moved to include the two-thirds majority provision. Seconded, and carried by seven affirmative votes.

Senator Farley moved that the Governor be given ten days to consider bills before signing or vetoing them. Motion seconded and carried.

Colonel Walton moved that 30 days be allowed for consideration after adjournment *sine die*. Motion seconded. Senator Farley moved to amend the motion to allow 45 days after adjournment, Sundays excepted. The amendment was seconded. The amended motion was seconded and carried.

Senator Farley moved that the language of the present Constitution be retained (Art. V, par. 7) in the rest of this Section. Referring back to paragraph 10 [Article IV, Section I of the 1944 draft], the first exception, it was decided to eliminate the words "the militia and" from the first sentence.

The meeting was adjourned.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, June 25, 1947

(Morning session)

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

PRESENT: Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: We have a quorum.

Governor Moore, we thank you very much for coming to appear before this Committee and giving us your point of view with regard to the Executive Section of the Constitution. What we have done with some of the previous Governors has been to ask them to speak to us first and then, with their permission, we have asked them some questions. If that is agreeable to you, sir, will you take the floor?

FORMER GOVERNOR A. HARRY MOORE: Do I stand, or is it informal?

CHAIRMAN: Informal.

GOVERNOR MOORE: Ladies and gentlemen:

I have prepared some notes on thoughts which have occurred to me as possibly being of some value to your Committee. They refer to the subject of constitutional revision of the Executive Department of the State Government. I shall read them, since your Chairman says this is going to be recorded for posterity, and perhaps it would be just as well if they were part of the record. I shall try to confine myself to them. *(Reading):*

Having been honored by the people of this great State by election to serve as their Governor three times, I feel that I am perhaps qualified to extend to the Convention the benefits of my experience.

It would, of course, be impossible in the necessarily limited scope of these remarks to cover the entire subject of constitutional revision of the Executive Department, but I hope that I can convey to you the absolutely imperative necessity that certain specific changes in the present organization of the Governor's status and powers be made by this Convention, if the business of the State of New Jersey is to be administered hereafter with efficiency, dispatch, a maximum

of governmental service to the people, and a minimum of political machination.

May I first state a summary of the conclusions to which my experience leads me and then briefly discuss my reasons for each of them:

1. The initial term of the Governor should be four years and he should be eligible for reelection indefinitely.

2. When he assumes office the Governor should have the power to appoint the heads of all executive departments, with the advice and consent of the Senate, but such officers should be removable by the Governor at his pleasure.

3. Whenever concurrence by the Senate is required the Senate should be required to act upon the appointment within 30 days. If they disapprove of an appointment, they should be required to return it to the Governor with a specific statement of the reasons for disapproval. Failing action on the appointment within 30 days, the appointment should automatically be confirmed.

4. The Governor should possess the right of executive veto of legislation, subject to being overridden by a two-thirds vote of each house of the Legislature. He should also have ten, instead of five days, for passing upon legislation.

In appraising each of the four specific recommendations which I now make, I submit to you a consideration common to all of them and one which I think lies at the very heart of what the average citizen of this State expects in a Governor. In plain terms, the people, when voting for a gubernatorial candidate, expect that if elected he will actually run the State. I do not mean to suggest that it is expected that he will be a dictator, but that he will personally make and be responsible for the carrying out of executive policy. It is expected that he will literally see to it that the laws are faithfully executed, and that the money appropriated by the Legislature for the business of government will be spent economically and effectively. He will have full and complete control over his principal subordinates, appointing them when he assumes office, and having at all times the power to remove them if their performance does not measure up to the standards by which he, the Governor, wishes to be judged by the people.

Let me enlarge briefly upon each of these recommendations.

First, the matter of the term of the Governor and his succession in office. In my opinion, it is elementary commonsense that the term of the Governor should be of sufficient length so as to enable him to acquaint himself with his job, formulate an integrated policy and program, and carry it through to completion. Part of the ammunition needed to effectuate these objectives lies in the other proposals which I have made and which I shall discuss. But of para-

mount importance is the length of time granted to the Governor to do the job expected of him. Three years is far too short. My view is that the term should be four years, as it is in 25 of the other states of the Union, including New York. In most of the 22 states where the term is two years, the Governor is permitted to succeed himself, and he usually does.

Under the scheme which prevails today in New Jersey the Legislature is in session when the Governor is inaugurated and he hardly has adequate time to prepare an intelligent and comprehensive executive program prior to the commencement of the following legislative year. In the second year his prestige and influence are substantially on the wane and he begins to meet obstructionism. In his third year he is, as you all know, the simple bearer of an unlighted torch. Neither the Legislature nor the heads of departments pay any attention to him, but concentrate their energies on the politics of selecting a new Governor for the following year, who will be equally powerless.

Now, the suggestion of the length of term is necessarily interwoven with the problem of the right of succession. I have absolutely no hesitation in placing my complete trust with the people of the State to reelect a Governor only when he is competent, and to reject his bid for reelection if he has not rendered acceptable public service in his current term.

Gentlemen, why should anyone deny the people the right to elect their own representatives? The government belongs to the people and no one else. If they wish to elect a man for one, two, or five successive terms, that is their business. Why should we eliminate from the prospective field of candidates from whom the people can make a choice, the one individual whose qualifications they are best able to judge—the then current Governor? As an instance, take former Governor Smith of New York. During his incumbency New York provided for two-year terms of office, but permitted reelection. Governor Smith was repeatedly reelected by the people of New York, practically by acclamation. His record for constructive and progressive public service in that office is one of the most shining pages in the history of political science in America. Why should not the people of New Jersey have the same latitude in selecting their Chief Executive? Thirty of our states have no limitation on succession, and only 13 states make the incumbent ineligible to succeed himself. The philosophy of non-succession was born in the early days of our history, when the memory of tyrannical royal governors still rankled the people. Today the sovereign is not an individual, but the people as an entirety.

My second recommendation is that the heads of all principal governmental executive departments shall have terms coterminous with

that of the Governor, be subject to his appointment with Senate confirmation, and be removable at his pleasure. To me it is inconceivable how the executive business of this State, including the disbursement of between 150 and 200 million dollars annually, can efficiently be accomplished in any other way. As I have already stated, the man in the street expects his Governor to be the head in fact, as well as in name, of the State Government. How can any Governor enforce the execution of his policy, or personally meet the responsibility for the entire government which popular opinion deems to inhere in his office, when he inherits an assortment of department heads from prior administrations, of whose capabilities he has no personal knowledge whatever, and who are, in many cases, secure from his influence or his direction or control by the fact that their terms will expire after his, and that he cannot remove or replace them?

And further, if the Governor is to be the Executive, he should be a whole, and not a fractional, Executive. It should not be possible for the Legislature to assume the appointment of any executive department head. The Governor's efficiency, influence and dominance in executive affairs is substantially impaired if the power of selecting department heads is liable to be taken over by the Legislature at any time.

You are all aware of how often this has occurred. Although our present Constitution provides for legislative election of the State Comptroller and the State Treasurer, the Legislature has from time to time removed other executive department heads from the sphere of appointment by the Governor. Such a practice violates the integrity of the fundamental principle of separation of executive and legislative powers, as we know it. In my view, even the Comptroller and Treasurer should be appointed by the Governor and not by the Legislature. The Governor is charged with the preparation of a budget for recommendation to the Legislature, and for the faithful execution of legislative appropriations, as well as other laws. Matters pertaining to the Treasurer and the office of the Comptroller are fiscal in nature and as such are absolutely integral with the Executive Department.

My next recommendation is intimately related to the appointive power I have just discussed. It is that the Senate, when passing upon executive appointments, should be required to act on them within 30 days, stating their reasons for disapproval, if they disapprove. The affairs of a department cannot be left in indefinite chaos while the State Senate, in effect, pocket-vetoes an executive appointment. If there is any objection to an appointee, both the Governor and the appointee should know it promptly—the Governor so that he may know the objection, and inform the appointee so that he may, in justice to himself, have a public opportunity to defend himself, com-

mensurate with the public pronouncement of his unfitness represented by a senatorial rejection.

My final recommendation has to do with strengthening the veto power of the Governor. The theory of the executive veto is not in conflict with the fundamental traditions of our governmental separation of powers between the Executive, Legislature and Judiciary. It is, on the other hand, an indispensable part of that system, as one of the checks and balances of the three departments upon each other. Just as the Senate is to check an improper appointment by the Governor, so the Governor should have some effective means of checking unsound legislation. Our Federal Constitution provided for a two-thirds vote to override an executive veto, and it has always thus remained and never, so far as I am aware, been seriously criticized or attacked. The Governor, as the sole state official elected by all of the people of the State, should be armed, on their behalf, with an effective instrument to impede the enactment of unwise, hastily prepared, ill-considered or, indeed, unconstitutional legislation maneuvered through an unsuspecting Legislature by special groups or interests.

New Jersey is one of only eight states wherein a bare majority of the legislature can override an executive veto. In 34 of the states it takes a two-thirds vote to do so, and in five states it can be done by a three-fifths vote. Why should New Jersey continue to adhere to the early colonial fear of a strong Executive which gave rise to our present provision for overriding a veto by a simple majority vote?

You will be interested, I am sure, to note that the committee report in the 1844 Constitutional Convention, recommending the majority vote, was carried against a motion from the floor to amend it so as to provide a three-fifths overriding vote, by a single vote, and that was the vote of the Chairman of the Convention, breaking a 27 to 27 tie vote on the floor. Thus, by the narrow margin of one vote, 103 years ago, we have ever since tied the Governor's hands against the exercise of an effective veto. This should unquestionably now be changed, and New Jersey should join the other 34 states and our National Government in providing for a two-thirds vote to override a veto.

In this connection, moreover, I also believe that instead of having only five days in which to consider bills which have been presented for his approval, the Governor should have ten days, the same as the President of the United States. Frequently, the Legislature will allow bills to accumulate and then throw them on the Governor's desk in such large numbers that it is physically impossible properly to consider them in five days.

Of course, I realize that I have been asked to speak to this Committee only on matters which concern the functions of the Gover-

nor, but in order to keep the record straight, may I say that I still believe that the Assembly should be elected by Assembly districts and that the new Constitution should provide for the exemption from taxation of the property of religious, educational and charitable institutions.

I sincerely trust that these observations, based not only upon my own experience as three-time Governor of this State, but upon my close observation of the operations of our State Government over a period of many years, will be of some assistance in the deliberations of this honorable Committee of the Convention.

CHAIRMAN: Thank you very much, Governor Moore, for your very interesting and statesmanlike presentation.

You know Judge Feller, our Vice-Chairman, who just came in?

GOVERNOR MOORE: How are you?

CHAIRMAN: I know you know Senator Farley.

GOVERNOR MOORE: How are you?

MR. FRANK S. FARLEY: Governor, how are you?

CHAIRMAN: Would any member of the Committee like to ask the Governor a question?

MRS. JANE E. BARUS: You said, I think, Governor Moore, you thought the Treasurer and the Comptroller should be executive appointments. Do you believe that having a legislative officer in the form of an Auditor, or whatever his title might be, to check or post-audit the executive expenditures is allowable and desirable?

GOVERNOR MOORE: Why, I hardly think you should check all expenditures! You have a State Auditor.

MRS. BARUS: I mean one chosen by the Legislature, if there should be a constitutional section against—

GOVERNOR MOORE: I don't think so, no, because, after all, the Legislature provides the money and spends it. A neutral Auditor would be much better, it seems to me, having in mind that the Governor, by his appointment, is representing all the people, whereas the Senator represents really one county and he has only to take care of that one county. The Governor has to go before the State.

MR. J. SPENCER SMITH: What is your opinion regarding county offices, such as surrogate and sheriff? Should they be constitutional officers, as they are today in the Constitution?

GOVERNOR MOORE: I think so. I think that in every county and state, there should be more home rule. We are talking about the Federal Government at Washington taking over the prerogatives of the state, which is true. Now, we certainly should not follow the same line. After all, it might wipe out all governments to have the Governor appoint them. The mayor of the town should have some local government, some local interest, and these positions give opportunity for the local election of people whom they know and desire to trust.

MR. SMITH: Along your line of thinking, these county offices should by Constitution remain so, so that the Legislature would not have the right to step in and take control?

GOVERNOR MOORE: I do.

MR. SMITH: Another question in that direction. To what extent do you believe in confining the power to local government? I am thoroughly in sympathy with that. I think the closer you can keep the government to people, the stronger you make our republican form of government. Is there any way, in your experience, that things could be so handled, from a legislative point of view, that we could maintain home rule without at the same time weakening our State Government?

GOVERNOR MOORE: Yes. We have the Home Rule Act now, and it is constantly being either enlarged or decreased. We should have as much home rule as we can get. I think one of the outstanding examples is boards of education. I don't think there are any officers in the State who do a better job than those unpaid, appointed members of boards of education. All of our executives have done a wonderful job, and it is a home rule proposition.

MR. SMITH: You don't mind if I differ with you on that?

GOVERNOR MOORE: No.

MR. SMITH: I served as—

GOVERNOR MOORE: Are you a member of a board?

MR. SMITH: Well, I was for 34 years in "President Volstead's" time, and my experience on the local board is this: I think tremendous savings can be made in our state expenditures if our boards of education were county-wide and not local. I desire to object to the local board. Too frequently a member of the local board sets himself up as a know-it-all and he interferes a little bit too much sometimes with the professionals.

CHAIRMAN: Let's stick to the point, please.

MR. SMITH: I am only trying to bring back to the Governor—

GOVERNOR MOORE: I am still for the board of education.

CHAIRMAN: I apologize, but I think we ought to stick to our discussion. . . . Colonel Walton.

MR. GEORGE H. WALTON: Governor Moore, in allowing the Governor ten days in which to consider bills passed by the Legislature, is it your thought that the subterfuge that has grown up over the terms of many Governors, of allowing the Governor to get around that five-day rule by having him call for bills as he wants to consider them—do you think that should be dropped and, if you do, is ten days sufficient?

GOVERNOR MOORE: Ten days is not sufficient if you want to consider bills very carefully, but ten days would be helpful and probably more easily gotten than anything else. I just want to point

out to you that if there is trouble between the Legislature and the Governor—it often happens; I tried to get along with them, trying to be a peaceable soul—but if you don't, I know that on occasion they come in with these bills, hundreds of them, and then say, "Send them over to that So-and-So and let's see what he is going to do." In five days he can't possibly. How could he? And that happens.

MR. WALTON: There were 400 bills at the end of this session. It would be humanly impossible, to my mind, to consider them in ten days.

GOVERNOR MOORE: They could have dropped them in as they went along. I suppose they did, but ten days is better than five.

MRS. BARUS: Wouldn't you think 30 would probably be somewhat more reasonable, especially at the end of the session?

GOVERNOR MOORE: Then again, you run into the idea that the Governor might be somewhat "hipped" against the man who sponsored the bill, and maybe it would be a bill that should be signed quickly, and the Governor could punish him by holding him up 30 days. I think ten days would answer the purpose fairly well.

CHAIRMAN: I would like to ask you this question: In your statement you said that not only should the heads of departments be appointed by the Governor with the consent of the Senate, but you went on to say you thought it should be possible to remove them at the will of the Governor.

GOVERNOR MOORE: Yes.

CHAIRMAN: Would you also further say that the removal ought also to have the consent of the Senate? If it takes the consent of the Senate to appoint, why shouldn't it take their consent to remove?

GOVERNOR MOORE: Of course, that does not always follow. The Governor is responsible for his administration and we are trying to make him responsible, but we are giving the Senate the opportunity to confirm. Now, the Governor is the best judge of whether a man is fitting in with the scheme of things, whether he is helping him to carry out his program or whether he is merely in opposition. Therefore, he should have the right to throw him out because, after all, the onus is on him if he is wrong, not on the Legislature.

MRS. BARUS: One of the drafts made some provision for not exactly a trial but a procedure that would give a fair hearing to the man who was to be removed, if he requested it. There would be a public hearing, and then the Governor, through one of the judges, could subpoena witnesses and bring in papers, if necessary, and so on; and the rights of the person who was about to be removed were protected, so that there was an orderly procedure. In

other words, the Governor could not exactly say, "I don't like the color of your necktie, so go along." He would have to show some justification for putting out a public officer. In the end, the decision remains with the Governor, but a public hearing would have to be held. Would you think that was a good provision?

GOVERNOR MOORE: No, I don't think so. I think the responsibility is still the Governor's. Even under civil service you have the right to dismiss a man in the unclassified service because you don't like the color of his necktie. It is the opportunity of the appointing power to select his own appointees for special positions, so that if the Governor is going to be the responsible head, he is going to stand or fall on his action. No Governor is going to dismiss a man without calling him in and discussing the situation with him, giving him a hearing, informally perhaps.

MRS. BARUS: To remove a public officer, after all, does put a good deal of slight upon him.

GOVERNOR MOORE: The Lord giveth and the Lord taketh away.

MRS. BARUS: He ought to have some public opportunity to defend himself, lest people judge unfairly of him.

GOVERNOR MOORE: I can't see that. If he is going to be judged unfairly, that is his lookout. He is in public life.

MRS. BARUS: It is conceivable that you have a political Governor and an honest department head, and you would want him, whether crooked or honest, to have—I think he ought to have a chance to establish his case in the public eye. After all, he has to look for another job somewhere. If he is fired under conditions that might indicate he was just plain crooked, it would be pretty hard for him.

GOVERNOR MOORE: Well, I don't think so. He could defend himself in the press and with his own statement. After all, the Governor is the one who must bear the onus of being unfair, and I don't think you would get a Governor who would be that unfair. He is a man who stands out among four million people.

CHAIRMAN: Senator Farley.

MR. FARLEY: Governor Moore, what is your attitude concerning a Lieutenant-Governor?

GOVERNOR MOORE: Well, of course, there is much to be said for and against a Lieutenant-Governor. Some may say it is only an extra position. On the other hand, he could be of value to the Governor in many ways. He could be the presiding officer of the Senate. The Lieutenant-Governor, of course, would be elected at the same time as the Governor. He would represent all the people, whereas the President of the Senate only represents one county and moves along usually by seniority, without regard, perhaps, to his

ability. As the representative of one county he probably would not be in the same position as a man who had been elected by all of the people of the State. I don't think it is a too important question.

MR. FARLEY: That is all.

CHAIRMAN: Judge Hansen.

MR. LEWIS G. HANSEN: I had in mind asking the Governor the same question.

CHAIRMAN: I would like to ask you a question, Governor. You mentioned the fact that you thought all the department heads should be appointed by the Governor. I know that you certainly are aware of the fact that the present head of the Department of Agriculture is elected by a sort of committee, by and with the consent of the Governor, and not by the Governor himself. Also the head of the Department of Institutions and Agencies is elected by a Board of Control and the Governor has no say in that matter at all. On the other hand, both of those departments, I think, have functioned remarkably well. Do you feel sufficiently strong in the matter that you think there should be one exception to the principle that the Governor should appoint all department heads?

GOVERNOR MOORE: Experience in the Department of Institutions and Agencies has, of course, been excellent. They have good men, fine men. And again, those men are selected, in effect, by the people, by the members of the Board of Control who are without salary and give of their time and experience. I can see where you would make an exception, perhaps, in that particular instance. Of course, the Governor does have a say. The Board always came to me and discussed appointments, and they were always amenable to suggestion, if it was a good one. I think in an instance like that, you could leave it to that Board with the advice and consent of the—

CHAIRMAN: Do you feel the same way about the Department of Agriculture?

GOVERNOR MOORE: I don't know that that is as necessary as the Department of Institutions and Agencies—and by the way, I hope you will increase the buildings for the institutions and agencies. They are in pretty bad shape. As far as your question is concerned, we have always had a good man in there, and I don't think it would make much difference. While the Governor does not actually appoint—

CHAIRMAN: Maybe we could accomplish somewhat the same thing if we kept practically the same method we have now of appointing the heads of those two departments, with two changes: one is that they should be appointed for a four-year term to be continuous and run concurrently with the term of the Governor, and the second, the Governor should have a veto power. If he

did not actually make the appointment, at least he would have a veto power, which, in effect, he morally has now.

GOVERNOR MOORE: I would go along with that. I think that is common sense.

MR. MILTON A. FELLER: Governor Moore, in the proposed constitutional provision for consolidation or merger of administrative departments of the government, do you think there should be a provision in the Constitution itself protecting the status of civil service employees who may be affected, or do you think it should be left out?

GOVERNOR MOORE: That, of course, could be done by law, and this consolidation of departments can be done by law. I think the Constitution should not be too voluminous. It should cover only fundamentals and basic rights, and the rest be provided by law, as they can do all of those things by law.

CHAIRMAN: Does any other member of the Committee want to ask a question? . . . Governor, would you like to say anything more to us on the Executive Section?

GOVERNOR MOORE: I don't think so.

CHAIRMAN: May I ask you this question? Do you have any observations to make about the militia? That also comes under our jurisdiction. Do you feel the present organization of our State Militia is adequate or correct, or would you suggest some changes?

GOVERNOR MOORE: I would not suggest changes. Of course, the General in command should be the General in command, as against anyone else. There is always some difficulty, some argument between the Adjutant-General and the General in command as to who represents whom. I am not military enough to say, but it would seem that the General should be the General and the Adjutant should be the Adjutant. I think you are going to have Adjutant-General Bowers here to cover that.

CHAIRMAN: He is coming at two o'clock.

MR. FARLEY: Governor, do you believe that the Adjutant-General and the Quartermaster-General should serve for a term concurrent with the Governor, or do you think we should continue under the present set-up of the Constitution?

GOVERNOR MOORE: The Adjutant-General is the adjutant of the Governor. He is the Governor's secretary in military affairs, as you, no doubt, know, and as to such secretary the Governor should have the power, if he is going to have a deputy military man, to select him the same as he selects his secretary. He has a civil secretary and a military secretary. The Adjutant is the adjutant to the Governor, military secretary to the Governor.

MR. FARLEY: How about the Quartermaster-General? Is your viewpoint the same on that?

GOVERNOR MOORE: I think with the Quartermaster-General, from long, valued experience, it is better to have one in whom you have confidence. General Barlow has been a splendid man in that capacity, and his predecessor, General Murray—both Republicans, by the way.

MR. FELLER: Do you think it should be made mandatory upon the Legislature to organize and maintain a militia, as the present Constitution provides, or do you think it should be up to the Legislature?

GOVERNOR MOORE: No, it should be mandatory because you will have arguments all the time. Better let well enough alone.

MR. SMITH: During your three terms you had a Republican Legislature?

GOVERNOR MOORE: Yes.

MR. SMITH: And you also had many men in office whom you did not appoint in the departments. Would you say, as Governor, that that handicapped you very much, or were you able to get along with them because of your executive ability and your pleasing manner, etc.? I contend that you can have all the laws you want. After all, it resolves itself very largely down to the man running the thing—his ability to get along with people and do things.

GOVERNOR MOORE: It depends on the man. If you had right men and women in office, you would not need a Constitution. If they were conscientious and could not be affected by political pressure, etc., you would not need a Constitution. You have a safeguard against getting men and women not of that type. After all, it is difficult to avoid the importunings of your party. I got along all right with them. Of course, there is the other side, too; don't forget, a Governor is importuned daily by people who want positions. The less jobs he has, the less will be the trouble he gets into. When you appoint one man, you make a hundred enemies. It is much better if you could slide along without appointing them.

CHAIRMAN: Any other questions?

GOVERNOR MOORE: I am a lawyer now, and I have to make the rent.

CHAIRMAN: Thank you very much indeed.

MR. HANSEN: I move, Mr. Chairman, that we extend a rising vote of thanks to Governor Moore for his kindness in coming here and enlightening us as he did this morning.

MR. FARLEY: I second the motion.

CHAIRMAN: All in favor, please signify by saying "Aye."

(Chorus of "Ayes")

(Rising vote of thanks)

(Recess for luncheon)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, June 25, 1947

(Afternoon session)

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

PRESENT: Barus, Eggers, Farley, Feller, Hansen, Miller, S. Jr., Smith, J. S., Van Alstyne, Walton.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: All ready?

Thank you very much for coming before our Committee, General Bowers.

As you probably know, this is the Executive Committee of the Convention, which is also charged with that section of the Constitution that concerns civil officers and the militia. We would like particularly to get your opinion with regard to the military.

You mentioned to me over the telephone this morning that General Powell and General Barlow probably would like to consult with you before you came, but I felt it would be a good idea to have your opinion and theirs separately, and then you could all get together and give us the benefit of your combined opinion.

If it is agreeable to you, I would like to have you make a statement as to how you feel that the sections concerning the militia should be changed, if at all, and when you have finished we hope you will allow us to ask you some questions.

MR. JAMES I. BOWERS: I would like to make a statement with respect to the way this meeting was arranged. By accident last night someone happened to listen to a telephone that was ringing, in Trenton, after five o'clock, after I had gone. I had an appointment in Princeton on the way up to my home in Somerville. Well, the message was, I think, from you to Colonel Charles, who happened to be in General Barlow's office at the time, stating that you wished me to be here today, and General Barlow at 2:30. Then something was said about General Powell coming in early in the morning. That message was relayed to me a short while thereafter—after I had called the office around 6:15.

This morning, however, Colonel Read in my office talked to Colonel Sharp, who had called General Powell's Chief-of-Staff, and had relayed to him the message about the proposed appointment

this morning. General Powell stated that he had not heard from anyone. He had not received any direct invitation to be here. If he had, he would have been here and held himself in readiness to come.

I was informed by General Barlow's office this morning—can you hear me all right with this gadget? I don't like the thing—

CHAIRMAN: This is being recorded.

MR. BOWERS: Oh, I see, excuse me. I didn't know what it was. General Barlow's secretary said he would be unable to get to the hearing today because of some other appointments. I then called General Powell and told him about the Generals' set-up for today, just before I talked to Senator Van Alstyne, and asked him how he felt about it. He said he felt we should have a conference before any of us appeared down here, and I told him that might be a good idea but I didn't feel I could postpone my coming as long as Senator Van Alstyne wanted me here. He said, "Well, see if you can get a postponement, at any rate," and I said, "Well, I'll try."

I suggested that to the Senator in my telephone conversation with him. He said he had already heard that General Powell would not be here today, and that General Barlow would be unable to come. He suggested that I come on down, and I am here.

I just wanted to get that clear so that these two other officers will not think that I am trying to run in ahead of them. It does not make any difference to me. I am glad to come before this Committee at any time, or any place, and tell them all I know, which won't be very much.

MR. GEORGE H. WALTON: I might add here that, at the request of the Chairman, last evening I tried to reach General Powell by telephone at his home, and was advised by someone there that he was at the shore and could not be reached by telephone. So I took the liberty of sending a wire to him, which he evidently did not receive.

MR. BOWERS: By way of suggestion, to clarify future complications of that sort, I think you ought to endeavor, if you could—it is just a suggestion on my part—to give these people a bit more notice. Some are traveling around the State; they have other appointments. Sometimes I do myself, but ordinarily I am available night and day, either at the office or at my home.

CHAIRMAN: I want to interrupt you at this point. This is a preliminary hearing. In the next few weeks we are going to give this thing more definite shape and you will get a copy of it, and you will have a chance to appear again.

MR. BOWERS: Very well. I think that is all right, and I know General Powell and General Barlow will be very pleased to express their own ideas as to what should be contained in the new Constitu-

tion with respect to the militia or the military, or whatever you want to call it.

Now, what do you want me to talk about? I haven't a notion as to why you wanted me to appear here.

CHAIRMAN: What we are interested in is this: There are certain provisions of the Constitution that make it mandatory on the Legislature to provide a State Militia.

MR. BOWERS: That's right.

CHAIRMAN: And they make it mandatory on the Governor to make certain appointments of officers, etc.

MR. BOWERS: Yes. I am quite familiar with Article VII, Section I, of the Constitution, dealing with the militia, and I will be glad—did you want to say something?

CHAIRMAN: I was just going to complete my thought. What we would like to have you speak about is: Do you feel that the present Constitution is adequate? If not, how do you feel it should be changed?

MR. BOWERS: I am addressing myself now to Article VII, Section I, of the present Constitution. I think, generally, the whole set-up, as far as the language is concerned, is quite archaic. I do believe, however, as stated in the first paragraph, that the Legislature should provide for the enrolling, organizing, and arming of the militia or a state military, whatever you want to term it.

The second paragraph, with respect to captains, subalterns, and non-commissioned officers being elected by members of their respective companies, I think is something that should be eliminated entirely . . . Was there something I can do for you?

CHAIRMAN: No, no, I was just looking for a copy.

MR. BOWERS: Do you have a copy of our report?

CHAIRMAN: I have one.

MR. BOWERS: Likewise paragraph 3, which refers to the election of field officers of battalions, regiments, etc.—I think that should be eliminated. I think all officers in the military should qualify professionally, physically and morally, according to the standards set up by the War Department which come down to the militia through the National Guard Bureau, which is part of the Special Staff. As a matter of fact, the election of officers should be entirely eliminated, because I think that is an archaic provision.

Paragraph 5, which I suppose we are all interested in, provides that the Major General, usually referred to as the Commanding General of the Militia, the Adjutant-General and the Quartermaster-General shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. There has been a great deal of discussion with respect to those three officers, who are constitutional officers under the present Constitution and, of course,

their terms have always been construed to be indeterminate, or for life. Frankly, I am not in favor of any military officer being appointed for life. I think the Governor should have some pretty wide discretion and appointing power with respect to military officers who serve under what might be called his own staff because, after all, he is the Commander-in-Chief.

I shall refer later on to what I think the Constitution should be with respect to the Adjutant-General who, by the way, is the only state military officer recognized by the War Department for the transmission of military business to the Governor. Under the National Defense Act of 1920, as amended in 1933, the Adjutant-General is a recognized officer of the State through whom is done all military business with the State, and he is so recognized by the War Department.

There are other provisions here which are more or less detailed provisions with respect to the officers of the militia and their elections. I think they, too, should be eliminated because that is subject matter which, in my judgment, should be left to the Legislature.

In dealing with the military, I believe similarly to what has been expressed by the Governor and by some of the papers—and I have had that idea myself for some time—that in writing a clause on the militia in the State Constitution, we should avoid legislating and set down the basic principles, and let this business of details with respect to qualifications of officers, mobilization, training, personnel and supplies, as it pertains to the military, be left to the State Legislature to enact by way of a Militia Law. In this way the Governor and the people will not be hamstrung by archaic provisions such as appear in this 1844 Constitution, and the Legislature will be in a position to legislate according to the times and to make changes, if changes be necessary, in order to conform to the present situation.

Back in 1943, as I recall it—back in 1942—there was some study and discussion preparatory to the submission of a proposed new Constitution, and several military officers then available, and some of them good ones, sat down and wrote some memoranda and finally evolved this, which is set forth in this report of the Commission on the Revision of the Constitution of 1942. I will read it. It isn't very long.

MRS. JANE E. BARUS: That is in the 1942 report? It is exactly that way?

MR. BOWERS: Yes, it is in there, in that draft. It is Article IV, Section IV, under the caption "Militia." It said—this is paragraph 1—

MR. J. SPENCER SMITH: Pardon me, General, what page was that on?

MR. BOWERS: Page 39, Section I, said (*reading*):

"The Legislature shall provide by law for enrolling, organizing, and arming the Militia, of which the Governor shall be Commander-in-Chief."

Of course, you don't disagree with me on that.

Now, then, this is what I referred to just a while ago and said I would refer to again (*reading*):

"2. An Adjutant-General who shall be chief of staff of the militia with the rank of Major General, shall be nominated and appointed by the Governor with the advice and consent of the Senate. The Adjutant-General shall serve at the pleasure of the Governor.

3. Officers of the militia shall be appointed and commissioned by the Governor, according to merit and fitness which shall be determined in such manner and upon such standards as now are or hereafter may be applied by the War Department of the United States for officers of equivalent rank.

4. No commissioned officer shall be removed from office other than by sentence of a court martial, or by a board constituted and empowered by law, except that all general officers may be suspended for cause by the Governor."

That is the way it was set up then. That was the result of study and the result of the thinking at that time, and I have heard no criticism of it. I think generally it would be all right there as far as the Adjutant-General is concerned. The Governor would not be saddled with somebody he did not want, because the Adjutant-General would serve at the pleasure of the Governor.

There might be some improvement to parts of it. For instance, in paragraph 3 it does not mention the Navy Department. You know, we have in New Jersey, in our militia system, a New Jersey Naval Militia which was quite a sizeable outfit before the emergency. I think they had some 11 divisions of Naval Militia under the new allotment of the Navy Department—the Third and Fourth Naval Districts were involved—and it will be much larger, probably three times as large as heretofore. Today that is a responsibility of the Adjutant-General's office, and the new Naval Militia is now in the course of organization. There may be some changes in paragraph 3 to cover such regulations as may be issued by the Navy Department, that relate to the New Jersey Naval Militia.

I can say that I agreed pretty much with the language contained in this 1942 draft, even though it did make the Adjutant-General sort of high man—and I am leaving personalities out of it. I don't care whether the Adjutant-General is Jim Bowers, or Dave Van Alstyne, or anybody else. I do believe that as long as the Adjutant-General is the high-ranking military officer recognized by the War Department, that he should occupy the position as stated in paragraph 2 of Section IV of the 1942 draft.

As time went on, there were other opinions expressed by other officers—General Ballantine, Colonel Grimm, General Barlow, General Powell, Colonel McGowan, and myself. At one time, I think,

several years ago, several of the officers were of the opinion that the present ranking or senior military officers, such as a Major General of the Militia, the Commanding General of the National Guard, the Adjutant-General and the Quartermaster-General, should continue to serve indeterminately, or for life. With that, of course, I do not agree and never have agreed, even though some of these officers might be considered career officers.

I know there was one Adjutant-General in this State—I just say this by way of interest, in passing—Major General William Stryker, who was quite an historian and an excellent military officer, who served, I think, from 1867 to 1900. It is said that he did one of the best jobs of any Adjutant-General in the State of New Jersey. I am just citing that as an instance, and many people who believe in this tenure idea often cite the example of General Stryker.

Then we get down to this 1944 draft, and it even more simplified. I am now turning to this little pamphlet which is, I think, the correct copy. I have lost some of my original file on the Constitution. I did quite a bit of work and a lot of study on it some years ago as a member of the Legislature. It is under—

CHAIRMAN: What Article and Section is that?

MR. BOWERS: I will give it to you right away. I think it is Article III, Section VII.

CHAIRMAN: Article III, Section VII?

MR. BOWERS: Yes.

Article III, Section VII, under "Legislative." In this pamphlet it is page 8. The committee in charge, which drafted the proposed revision of the Constitution of 1944, boiled the thing down a little bit finer than ever, I think—more in line, maybe, with your way of doing business at this Convention. They said this under Section VII (*reading*):

"1. The Legislature shall 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."

I have no quarrel with that. I like the draft of the 1942 report. Secondly, I would say this would be a very satisfactory and ideal policy which, no doubt, you will follow, namely, stating the basic principle and leaving the details to the Legislature for future action, in order to keep up with the times.

CHAIRMAN: Is there anybody who would like to ask the General a question?

MRS. BARUS: You think that the Adjutant-General should be appointed to serve at the pleasure of the Governor. Would that apply to the Quartermaster-General and the Major General as well?

MR. BOWERS: I don't think they should be constitutional of-

ficers. I don't think either one should have life tenure, nor do I think the Adjutant-General should have life tenure. As far as that is concerned, I think the Quartermaster-General should be a staff officer on the staff of the Adjutant-General. It should be organized along the lines of the General Staff. The Adjutant-General should be Chief-of-Staff. That is my viewpoint. General Powell may disagree with that. He has the right to disagree. Under G-1, G-2 and G-3, you have personnel, intelligence, plans and training, and the Quartermaster-General should be G-4, supply. He should not be on a rank equal to that of the Adjutant-General or the Commanding General of the Militia. That is something which has caused a lot of talk and comment and, certainly, should definitely be cured by the Legislature or by the Constitution. I don't care which.

MRS. BARUS: As you can see, I don't know too much about the militia. However, I do want to ask you this question. In the normal course of military procedure, he would be appointed by the Governor, presumably, on the recommendation of the Chief-of-Staff, or in consultation with the Governor?

MR. BOWERS: That could be done. Of course, I think he should be appointed by the Chief-of-Staff. Naturally, the Governor would have to approve of the recommendation made by the Chief-of-Staff, but those are details which could be worked out very satisfactorily. But definitely, the Quartermaster-General should be a supply officer on the staff of the Adjutant-General. His rank should not be equal to that of the Adjutant-General, and I am not saying that with any personal feeling. I think that is a military procedure which should be adhered to. Perhaps if you read the 1937 Militia Act, you will see what I mean. I think it gives too much unusual power to the Quartermaster-General.

CHAIRMAN: Colonel Walton.

MR. WALTON: General Bowers, the Constitution reads: "He shall be the Commander-in-Chief of all the military . . ." That is, of course, referring to the Governor. . . . "and naval forces of the State."

MR. BOWERS: That's right.

MR. WALTON: That is the Executive Section?

MR. BOWERS: That's correct.

MR. WALTON: Now in the revision of 1944 it was made to read: "He shall be commander-in-chief of all the military, naval and militia,"—

MR. BOWERS: No, no. How is that again?

CHAIRMAN (*reading*): "He shall be the commander-in-chief of the militia and all the military and naval forces of the State."

MR. BOWERS: That's right.

MR. WALTON: Do you know, General, why the word "militia" was added there?

MR. BOWERS: I can only say this—that the words "militia" and "military" are used pretty much synonymously there, I think. But the word "militia" ordinarily is referred to and would be defined to include all the able-bodied men in the State of New Jersey within certain age limits. For instance, in the National Guard, 17-18 to 45, and in the Navy or Naval Militia, 17-45, who can bear arms at a time of emergency. I can give it to you more definitely from the book if you care for me to do so.

MR. WALTON: General Bowers, you think that the word "military" includes "militia" there? It is not necessary for us to put in the wording that was added in the 1944 draft? Is that correct?

MR. BOWERS: I don't think it does any harm to treat it as it is treated in paragraph 10 of the 1944 draft. This Article—

MR. WALTON: What is the Article? VI?

MR. BOWERS: No, Article IV, Section I, paragraph 10. I don't think the wording does any harm. I don't know why it was done. I was not consulted on the arranging of the wording in that, but I think it is pretty all-inclusive, the way it is worded.

MR. WALTON: Yes. It would seem to me unnecessary to add those words.

MR. BOWERS: But I don't think you will go wrong in using "military" or "militia," one or the other. For instance, the word "militia" as defined in the 1937 Militia Law under Title 38, subtitle 1—I think it is 1937, I am not sure—it says the word "militia" is used in this subtitle to mean all the military and naval forces of this State. That would carry out the thought I just expressed to you—whether organized or unorganized, or active or inactive. You will find that in *R.S. 38:11*, which is the 1937 revision of the Militia Law. I hope I have made clear what I intended to convey to you on that.

MR. WALTON: Yes, thank you.

CHAIRMAN: Mayor Eggers.

MR. FRANK H. EGGERS: Did I understand you to say the Adjutant-General would be in charge of the Naval Militia, too?

MR. BOWERS: Yes, sir, that's a part of the duties of the Adjutant-General's Department, to arrange for the organization and supervision of the Naval Militia.

MR. EGGERS: Would it be your opinion that that would be conducive to efficiency, to have an Army man in charge of procurement, personnel and training of the Naval Militia?

MR. BOWERS: I am glad you brought that question up. I think—this is my own personal viewpoint, and others may disagree

with me—I do think there should be a naval officer on the staff of the Adjutant-General in charge of Naval Militia. That's a very good point. It was brought up in discussions some time ago and I neglected to mention it up to this point. I am very happy you brought it up, but I do believe so. As a matter of fact, just at the beginning of the organization of the New Jersey Militia following World War II, I had asked to have assigned to my office by the Third Naval District—that is, New York, of course; the upper half of New Jersey is included in that district—a naval officer who could advise me on Naval Militia affairs in the State of New Jersey.

CHAIRMAN: Judge Feller.

MR. MILTON A. FELLER: General Bowers, the present Constitution says: "The Legislature shall provide by law for enrolling, organizing and arming the militia." That makes it mandatory?

MR. BOWERS: That's right.

MR. FELLER: Now in 1944, when the Legislature prepared a revised Constitution which was eventually rejected, everybody at that time thought that Selective Service was going to be on a permanent basis and that the Federal Government would maintain a large Army and Navy. So the Committee put this provision in Article III, Section VII: "The Legislature *may* provide by law respecting the enrolling, organizing, and arming of the militia . . ."

MR. BOWERS: Well, are you sure you have the last copy, Judge?

MR. FELLER: I have the exact one—of the original.

MR. BOWERS: Or do you have a reprint?

MR. FELLER: No. Now, that situation has been changed drastically. The Selective Service is not on a permanent basis, and the Federal Government does not, at the present time, have a large Army and Navy. Do you think, with the situation as it is now, that it should be a mandatory provision in the revision of the Constitution, as it is now, or permissive?

MR. BOWERS: It should be mandatory—very much so. We are a part of the United States of America. Let's not kid ourselves about that. We need a strong Army and Navy. A strong America is a peaceful America, and under your naval defense plan the three main component parts of the Army are: the Regular Army, the National Guard, and the Organized Reserve Regular Army. The Regular Army and National Guard are the first line of defense, and the states must organize according to the plan of the War Department. Otherwise, our national defense plan, I think, will collapse.

CHAIRMAN: Commissioner Smith.

MR. SMITH: Oh, excuse me. Are you through, Judge?

MR. FELLER: Yes.

MR. SMITH: Following up, General, on what you just said,

would it be proper and in order in improving the Constitution, that the phraseology that would cover our Militia and Navy, or whatever military forces there may be, should conform to whatever standards or program the Federal Government has for the War and Navy Departments?

MR. BOWERS: I don't think we need to do that because, naturally, the National Guard, which is now the National Guard of the United States, would take a dual load. When you become a member, for instance, of the National Guard, you become a member of the National Guard of the United States, and the National Guard of the United States must conform to federal regulations. The same way with officers, the same way with Naval Militia, and the same way with the United States Naval Reserve. Those regulations are all prescribed by the War Department and the Navy Department, and I don't think we need say anything about it in the Constitution because before they can get recognition they must conform to those standards.

MR. SMITH: I grant you that, but what was in my mind was, I am trying to integrate what you said just a moment ago—that we are part of the Union, and our armed forces should be also. However, you might have some people say, "Well, why do we want to do that? Why do we want that? We don't accept that. We will just go along our own way." And they wouldn't be integrated, because they wanted to be independent. I am just conceiving of something of that sort. Since the defense of the nation, I think, depends exactly on what you said, I am wondering whether to prevent anything like that it would be well to put it in the Constitution, which would show that as far as the Union is concerned, we are a part of the armed forces.

MR. BOWERS: I don't think you need do it. It might be all right to do it, but I wouldn't if I were you. Furthermore, if we are going to get our federal appropriations to carry on the National Guard and the Naval Militia, we have to conform to their standards and requirements. So, I don't think we need to worry about that at all.

MR. SMITH: I agree with that. But I am violently for states' rights, and I am taking my own viewpoint now. From that angle I would say, "No, we don't want that." But, on the other hand, I am violently for conforming to the National Government or the War Department.

MR. BOWERS: I see.

MR. WALTON: General Bowers, in the event that we wish to set up a civilian war disaster course, such as they have in New York State, then putting a requirement in the Constitution that mem-

bers of the militia would have to follow certain standards might handicap us in setting up such an organization. Is that correct?

MR. BOWERS: I would think so. I think you can provide by legislation for such things as that disaster course or the New Jersey State Guard, which is a temporary force in the State of New Jersey, while the National Guard is in federal service.

CHAIRMAN: Mrs. Barus.

MRS. BARUS: I think that answers my question—that this would not have to fit in with the pattern of whether military training is adopted.

MR. BOWERS: I would say so. I hope universal military training is adopted. I think it would help not only the Regular Army but also the National Guard and the Organized Reserve very much.

MRS. BARUS: This previous statement would still make the New Jersey plan fit in with the federal plan?

MR. BOWERS: I don't think there would be any question about it.

CHAIRMAN: Judge Feller.

MR. FELLER: I just want to say, General Bowers, in reading again the proposed original draft of the 1944 Constitution in respect to the militia, it states: "The Legislature shall . . ." That makes it obligatory, right?

MR. BOWERS: That's right.

MR. FELLER (*continuing to read*):

" . . . 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."

I am asking this specific question: Do you feel that that is all that is needed in the Constitution to handle the situation adequately?

MR. BOWERS: I do.

CHAIRMAN: Mrs. Barus.

MRS. BARUS: You still want in there a provision that the Governor shall appoint the Adjutant-General to serve at his pleasure?

MR. BOWERS: I will answer that in this way. That was in the 1942 plan which we agreed on then and submitted to the committee which had charge of the 1942 report. I said I favored that above this, but if it were not acceptable, certainly this would be agreeable to me and would cover the situation just as well as the other. Legislation can take care of the other subject matter in the 1942 draft just as well.

CHAIRMAN: Does anybody else have any question to ask of General Bowers? Judge Feller.

MR. FELLER: I believe you stated before, General, you thought that these appointments should be for a term but not for life?

MR. BOWERS: At the pleasure of the Governor. I think the Governor has the right to choose his own Chief-of-Staff, or whatever it may be.

CHAIRMAN: In other words, let's put it this way, General Bowers. You are thinking of it in terms of the federal set-up—

MR. BOWERS: To a great extent, yes.

CHAIRMAN: . . . where all the officers, all the senior officers of the United States Army and Navy really serve at the pleasure of the President of the United States?

MR. BOWERS: Yes, that's right.

CHAIRMAN: That's really its effect?

MR. BOWERS: Or for a definite term.

CHAIRMAN: But it is generally at the pleasure of the President?

MR. BOWERS: The Chief-of-Staff serves for a definite term.

CHAIRMAN: But what if the President wants to withdraw his orders?

MR. BOWERS: There is always a way that can be done.

CHAIRMAN: They don't serve for a term, as I understand it, as far as the law is concerned. It is only a term by custom or appointment?

MR. BOWERS: By executive orders, sir.

CHAIRMAN: But the executive orders can be changed?

MR. BOWERS: Yes.

CHAIRMAN: Is it for a four-year term, General?

MR. BOWERS: Four years, yes, for the Chief-of-Staff.

CHAIRMAN: Any other questions? Commissioner Miller.

MR. SPENCER MILLER, JR.: I would like to ask you, General, if the Governor's term is extended from three to four years, would that alter in any way your recommendation about serving at the Governor's pleasure?

MR. BOWERS: No, sir. I don't think that would make any difference at all. I don't see how it could.

CHAIRMAN: Have you any other statements you would like to make to us, General Bowers?

MR. BOWERS: I have not, but I will be glad to answer any question that I can, that would be helpful.

CHAIRMAN: Commissioner Miller.

MR. MILLER: General Bowers, in review, you favor a set-up very similar, on a small scale, of course, to the federal set-up, for a Chief-of-Staff at the Governor's pleasure, with G-1, G-2, G-3 and G-4 under him?

MR. BOWERS: That's right.

MR. MILLER: Of whom G-4 would be the Quartermaster-General?

MR. BOWERS: That's right.

MR. MILLER: And the commander of the division would, in effect, be like the commander of the ground forces, is that correct?

MR. BOWERS: Yes, that's right, like a commander of a ground force. I don't think the commander of the ground forces should act as a Chief-of-Staff. I don't think that should be. It doesn't work out. It doesn't in the Regular Army, and I don't think it would work out here.

CHAIRMAN: Any further questions? Commissioner Smith.

MR. SMITH: I am trying to follow through as to what you said. Did I understand you to say that G-4 in the Regular Army would be part of the staff, but that the Quartermaster-General is not G-4 in the War Department? Is that right?

MR. BOWERS: Well, I think he would be on the General Staff set-up.

MR. SMITH: Because, as a matter of fact, I know when I was with the War Department that wasn't so. Of course, things may have changed since.

MR. WALTON: The Quartermaster-General is a subordinate officer under G-4. Isn't that so?

MR. BOWERS: Yes, that's right.

MR. SMITH: I thought it was the Chief-of-Staff.

MR. BOWERS: No.

MRS. BARUS: The commander of the ground forces is G-1?

MR. BOWERS: The commander of the ground forces is not part of the General Staff. He is the commanding general of the ground forces. G-1 is usually personnel, G-2 intelligence, G-3 plans and training, and G-4 supplies. That is the way it goes.

CHAIRMAN: Senator Farley.

MR. FRANK S. FARLEY: General Bowers, you explained that you believe the Governor should appoint the Adjutant-General. How about the Quartermaster-General and the Major General? Who should appoint them?

MR. BOWERS: I think they should be suggested by the Chief-of-Staff, and approved by the Governor on recommendation of the Chief-of-Staff.

MR. FARLEY: Approved by the Governor?

MR. BOWERS: Recommended by the Chief-of-Staff and approved by the Governor. The reason I have taken the Adjutant-General is—now there are no personalities involved in this thing at all—the Adjutant-General under the National Defense Act is a military officer of the State who is recognized for the transaction of military business in the State. He is the channel through which

all military business passes to the Governor, and he advises the Governor with respect to all communications concerning the military and the naval and militia. I might say that in all the states of the Union the Adjutant-General is treated in that fashion, and properly so, in accordance with the National Defense Act. I think there are only two states in the Union, to my knowledge, that have a Quartermaster-General. Only two, I don't recall offhand which they are, but ordinarily, as Colonel Walton pointed out, they are part of the staff. The Quartermaster-General and supply officer would be G-4 on the staff.

CHAIRMAN: I would like to entertain a motion, please. Senator Farley.

MR. FARLEY: I move that we thank General Bowers for his presence.

MR. LEWIS G. HANSEN: I second the motion.

CHAIRMAN: All in favor will please signify by saying "Aye."

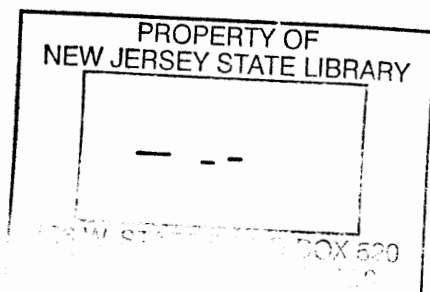
(Chorus of "Ayes")

CHAIRMAN: Thank you very much indeed, General Bowers, for coming down here and talking to us.

MR. BOWERS: It was a pleasure. I might say that if any questions come up in your study of the plan, if you will let me know, I will be glad to give you a memorandum on anything that I can help you.

CHAIRMAN: The meeting is adjourned.

(The session ended at 2:50 P.M.)



STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Thursday, June 26, 1947

(Morning session)

(The session began at 10:15 A.M.)

PRESENT: Barton, Barus, Eggers, Farley, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: The meeting will please come to order.

This is a public hearing called by the Executive Committee of the Constitutional Convention on the Executive Section that has been assigned to us. I might say to those who are interested that we will continue the public hearing on this same section, if necessary, at 11 o'clock Tuesday morning, and then go on from there to have a public hearing with respect to the civil officers and military sections.

I recognize that there are two organizations here that would like to speak today: The League of Women Voters. . . . The League would like to wait, I understand. . . . The Committee on Constitutional Revision is here and if they would like to speak now, we would be glad to hear from them.

MR. CHARLES R. ERDMAN, JR.: Senator Van Alstyne and members of the Committee on the Executive:

The Committee on Constitutional Revision is composed of the New Jersey State Federation of Labor, the New Jersey State Federation of Women's Clubs, New Jersey Association of Real Estate Boards, New Jersey Taxpayers Association, the National Council of Jewish Women, Consumers' League of New Jersey, American Association of University Women, New Jersey Association of Colored Women's Clubs, New Jersey League of Women Voters, Congress of Industrial Organizations, and New Jersey League of Women Shoppers. These are the constituent organizations. Of course, in addition to those there are a number, such as myself, who have no particular affiliation with these organizations but are members of the committee, and of course all of us are vitally interested in proper constitutional revision.

I might say at this point, as we sit around this ring, that it is

a little terrifying, and I am reminded that just the night before last, in the City of Cleveland I believe, someone was killed in the ring. So if there are any stones thrown at me today, I will bear in mind what I read in the paper this morning.

I wish first to outline very briefly the major points upon which these organizations have agreed, because this committee adopted a rule that they would not recommend any particular provision unless all of the constituent organizations agreed. In other words, these proposals represent the unanimous approval of the organizations. I must also say that obviously they may not represent, as I will point out as to one of them myself, the beliefs of each individual member, because some of us naturally have reservations on at least one of the points. However, first I wish to give just the major points upon which these constituent organizations have agreed.

They are all unanimous in wishing to see provisions in the new Constitution which would provide for an efficient, a responsible, and by the same token, a powerful Executive Department.

First, they would like to see a Governor elected for a four-year term in the odd year. They would like to see that a Governor be permitted to succeed himself, but only once. I might say, and I am going to elaborate on that point later, that I personally disagree on that particular provision.

Second, they would like to see his veto power strengthened by requiring a two-thirds vote to override any veto, and giving him more than five days in which to act on legislation presented to him.

Third, they would like to give him the power: (a) to require information in writing from department heads; (b) to investigate state and local offices and agencies; (c) to remove state officers for cause, after hearing; and (d) to seek appropriate court action to require compliance with the Constitution or laws by any state or local public officer or body.

And then, fourth: (a) they would like to see a state administration which would be limited as to the number of state departments, with possibly the limit of 20; (b) they would like, except with a few possible exceptions, departments to be headed by single commissioners appointed by the Governor for terms corresponding with his own; and (c) they would like to give the Governor the initiative, subject to legislative review, to allocate functions and agencies among these 20-odd state departments.

As to the financial powers of the Governor, they believe that there should be provision for an executive budget and that there should be some limit placed on the Legislature to increase or add to budget estimates or enact supplemental appropriations. I might say at this point that Mr. Bebout and Professor Rich, who are going to follow me, will elaborate more in detail on several of these pro-

visions and will also present suggested drafts for the use of the Committee in case any of these points are being thought of favorably by your Committee.

They would like to see a consolidated State Fund and a single fiscal year. I realize those matters are partly executive and partly to be considered by the sub-committee of the Convention on fiscal affairs.

They would like to see that the Senate should be required to act on nominations made by the Governor within a reasonable time.

And finally, they would provide that a state department head designated by the Governor shall act in the Governor's place immediately upon the occurrence of a vacancy or his temporary absence or inability, provided that the Legislature may elect a qualified person to replace such Acting Governor if the Governor be permanently separated from his office or if his absence or inability lasts more than 60 days.

Now, I would like to sum up and then add, if I may, my own personal view on one of these points:

The proposals for change in the Executive Article of the Constitution made by the Hendrickson Commission in 1942, the legislative document of 1944, and the principles agreed upon by the constituent organizations of the New Jersey Committee for Constitutional Revision, are all in substantial agreement on all major points, with one single exception.

All agree that the term of the Governor should be lengthened to four years, that he should be given complete authority to control the executive departments of the State, exercise the initiative in all administrative reorganizations, and have his veto power strengthened.

The one exception has to do with the continuation of the present provision forbidding a Governor to seek successive terms. The members of the Hendrickson Commission favored a provision against successive terms. I happened to be secretary of that commission and I well recall the debates on this point, with the decision strongly affected by the fact that the increased powers which were recommended for the Governor—and, as I said a moment ago, they are similar in all respects to those the committee that I represent is now recommending—those powers would make the Chief Executive of New Jersey by all odds the most powerful officer in any of the 48 States. Accordingly, six of the seven members of the Hendrickson Commission felt that no Governor should be under the temptation of using those great powers for the creation of a personalized political machine designed to assure his reelection, but rather should use them solely in the public interest, and they so voted. So far as I know, no one of these six has changed his opinion.

Evidently, this belief was shared by the framers of the 1944 document, while the contrary recommendation, as I have just pointed out, was made by the Committee for Constitutional Revision which felt that a good administration of the State's affairs should be rewarded by reelection, but only by one reelection. They proposed a ban on third terms.

I feel so strongly about this controversial point that I wish to add my own personal observations and opinion. Those who advocate permitting a Governor to succeed himself on the grounds that a majority of our sister states do likewise evidently miss the most essential point in the whole controversy—the fact that the new grant of powers will make the Governor under the new Constitution the most powerful Chief Executive in the country, more powerful in his jurisdiction than the President of the United States or the chief executive of any city or other unit of government within their respective spheres.

We must not forget this point, because in so doing we will be drawing analogies that do not exist. Permitting a municipal executive, or the governor of some other state or even of New Jersey under the present Constitution, to succeed himself is not a valid comparison because of the fact stated above.

Furthermore, the argument that the possibility of two terms will make it easier for a Governor to surround himself with capable administrators does not impress, but rather alarms me. It would too easily lead to the use of the chief administrative positions as the "pay-off" spots, to be occupied only so long as the incumbent directed all his energies to the continued "oiling" of the incipient personal political machine of a Governor ambitious for reelection, even to the point of sacrificing the public interest.

It has been said that the restriction on a second term has impaired the leadership of our Governors in their second and third years. Even those who advocate removing this restriction agree that there should be a prohibition against a third successive term. If this be so, we could then expect that the influence of a reelected Governor would likewise be impaired for the entire four years of his second term. These advocates cannot have their cake and eat it too.

I just wanted to make that last point with regard to the ability of the Governor to succeed himself, because I personally feel rather strongly about it. It is the only point of major importance on which these three great groups—the Hendrickson Commission, the Legislature of 1944, and the Committee for Constitutional Revision—do not agree. On all other matters, as I said a moment ago, I think we are in substantial agreement.

I thank you for this opportunity to be heard. If there are any questions, I would be only too glad to answer them.

CHAIRMAN: Is there any member of the Committee who would like to ask a question of Commissioner Erdman?

MR. DAVID YOUNG, 3d: Commissioner Erdman, I think you have answered the question, but I just want to make sure. The various matters which you have recommended place the powers of the Governor far in excess of those of any chief executive in any of the 48 states in the United States, is that correct?

MR. ERDMAN: Yes; that would be the situation under the recommendations made by the group, as I have outlined them. There would be no appointment for life except after a trial period in the case of the judiciary. The Hendrickson Commission report had that. Nevertheless, the Governor would have the power to designate every single officer who is appointed in the State Government. If he were there for a second term, he would even have power to control by appointment every single judicial officer.

MR. YOUNG: And these recommendations that you make for consolidating and allocating the functions of the departments are very similar to the war-time powers of the President under the various statutes of the Federal Government, is that so?

MR. ERDMAN: That is correct, with the single exception that this allocation of administrative functions among the various departments would be subject to legislative review, which is not quite the case in some of the war-time powers.

MR. YOUNG: Well, of course, that is also true with regard to Congress. They could have revoked the President's power under the act that gave it to him. It was a war-time power, isn't that so?

MR. ERDMAN: That's right.

MR. YOUNG: The result would be subject to Congress as well as subject to the Legislature in the State, isn't that true?

MR. ERDMAN: That's right.

MR. YOUNG: Now, in most of the States that you know of where a veto power has been increased to two-thirds, isn't it a fact that the lower house of the legislature is elected by districts rather than by counties?

MR. ERDMAN: I am sorry I can't give you the exact facts on that, Senator Young, but it is my impression that most all of them have a district system. It may be that their district may be called a county, but in those states where it is a county, their counties are much more numerous than in New Jersey, and also probably smaller in population.

MR. YOUNG: Well, then, is your organization or group of organizations in favor of dividing the county up into districts?

MR. ERDMAN: That, as I see it, would come before the Legis-

lative Committee. On the other hand, I think they have recommended—if you would like to know their feeling on that particular point—that the Legislative Article should be so worded that it might be possible for the Legislature to provide for Assembly districts. But they did not ask that it be placed in the Constitution; merely that it would not be excluded by the Constitution.

MR. YOUNG: Commissioner Erdman, what did you mean when you said something to the effect that the Governor should be able to add to the budget? Did you mean that he could have a separate budget but make appropriations himself? I didn't quite understand your recommendation.

MR. ERDMAN: No. I might just read it over again, because I stopped in the middle of that and I know I confused you by doing so. (*Reading*): "Provide for an executive budget . . .," which is in all respects similar to what we have now. I mean, the Governor now presents an executive budget. There is no new—

MR. YOUNG: It merely is a recommendation.

MR. ERDMAN: That's right. (*Reading*): ". . . and limit the power of the Legislature to increase or add to budget estimates." They could, of course, decrease it but, except by a two-thirds vote or some special provision, they would not be allowed to increase the executive recommendation or enact supplemental appropriations. In other words, there is this suggestion—that if the Legislature is to enact any supplemental appropriations, it would be done by a greater vote than a mere majority vote.

MR. YOUNG: Then, do I understand that you feel by the vote of two counties, as it would be in the Assembly, they could stop an increase in the executive budget or his recommended budget?

MR. ERDMAN: They would, of course, be able to block the whole budget.

MR. YOUNG: You are in favor of the vote of two counties—which would bring it down to one-third, because the two largest counties in the Assembly have enough votes to bring it down to that amount—to stop an increase or a decrease in the executive budget, is that correct?

MR. ERDMAN: An increase by the Legislature of the executive budget? Is that what you mean?

MR. YOUNG: Yes.

MR. ERDMAN: Yes.

MRS. JANE E. BARUS: But, Commissioner Erdman, you didn't say that they could not decrease it, did you?

MR. ERDMAN: No. Of course, a simple majority could decrease it. In other words, it would be just the same as the present procedure, with a single exception: under present procedure the

Legislature by a simple majority can increase any executive recommendation of the budget.

MR. YOUNG: Then Hudson and Essex Counties, with their twelve and nine votes in the Assembly, and with each county delegation controlled as is the case at present, would be able to stop an increase in the executive budget?

MR. ERDMAN: Yes, an increase in the executive budget made or advocated by the rest of the Legislature. It would not stop the rest of the Legislature from enacting an executive budget that the Executive had recommended, even though it was an increase from the year before.

MR. YOUNG: Of course, you know the Appropriations Committee goes in, and as to some items they wipe out what the Governor suggests and in others they increase substantially, isn't that so?

MR. ERDMAN: That's right.

MR. YOUNG: Well then, under this, two counties would be able to stop that. Do you think that that is fair to the rest of the State?

MR. ERDMAN: Well, I think we rely in this recommendation on the fact that the Governor should be the recommending officer and should have more power than he now has in fiscal affairs. That is the basis of the recommendation.

CHAIRMAN: May I get into this, Senator Young?

MR. YOUNG: Yes, I would love to have you in it.

CHAIRMAN: Commissioner Erdman, I want to be sure to get this straight. You are in effect taking away a very substantial amount of the monetary power of the Legislature and giving it to the Governor under this recommendation, and that cuts through a theory of government which has been in existence in this country for nearly, or certainly, a century and a half.

MR. ERDMAN: Let me see if we have a draft on that. I haven't been over this for some time. This is the recommendation of the joint body, and possibly Mr. Bebout, who is more familiar with this particular recommendation, has a draft which would clear up some of these points. Do you have that, Mr. Bebout?

MR. JOHN E. BEBOUT: No, we do not have a draft on that yet, as a matter of fact. But I had assumed that that was possibly going before the Committee on Taxation and Finance, or whatever it is called, so I didn't bring it today.

MR. ERDMAN: I am not in a very good position to argue this point because this is not any personal recommendation of mine. I am simply representing the committee on this subject and I regret I am not more adequately prepared on this particular point.

MR. YOUNG: Commissioner, may I get back to that two-thirds veto? Do you feel that two counties of the State should be allowed

to stop a bill from being voted upon over and above the Governor's veto? I mean, knowing politics and knowing how things happen in the State.

MR. ERDMAN: In other words, do I think it is all right to allow only two counties to uphold the Governor's veto?

MR. YOUNG: In other words, if Hudson and Essex uphold the Governor's veto on a particular bill.

MR. ERDMAN: I agree on that.

MR. YOUNG: You agree on that?

MR. ERDMAN: Yes, I agree on that. I agree that a two-thirds vote should be necessary to override the Governor's veto.

MR. YOUNG: May I follow up this one question? Is that based on the fact that you feel that the Assemblymen should be elected by districts rather than throughout the entire county, or do you still feel that same way if they are elected throughout the entire county?

MR. ERDMAN: This is only my personal opinion.

MR. YOUNG: I would rather have your personal opinion.

MR. ERDMAN: My personal opinion is, I would rather see Assembly districts.

MR. YOUNG: I mean, do you still feel that way if they are elected by the entire county?

MR. ERDMAN: Well, I must agree with you a little bit, Senator Young, that I would much prefer to see Assembly districts, because I think there would be less chance of controlling a whole county delegation if you had Assembly districts.

MR. YOUNG: That is what I am getting at. Frankly, everybody is afraid to talk out. There have been a lot of people who say of certain counties, "If you want the vote, you don't go see the Assemblyman; you talk to one man." With that in mind, you feel that a two-thirds vote to override a veto is proper?

MR. ERDMAN: I think under the existing situation that a two-thirds requirement to override is possibly the equivalent of four-fifths if you had the other system.

CHAIRMAN: Of course, I think you are giving the Governor—I don't know what kind of a word to use—a fantastic power.

MR. ERDMAN: You are.

CHAIRMAN: On that basis you practically say the Legislature has nothing to do with the appropriation of funds, or very little, because you say that the Legislature cannot increase any item, mind you, in the Governor's budget.

MR. ERDMAN: Except by a larger vote than a mere majority.

CHAIRMAN: I simply want to say, speaking as one who has been a member of the Appropriations Committee for four years, that in no one of those four Governor's budgets was there any ex-

ception to the fact—in quite a number of items the Governors themselves, after the Appropriations Committee had investigated the thing, admitted quite frankly that had they known the facts as they then existed, they would certainly have appropriated more funds.

MR. ERDMAN: Then they would certainly do so under the two-thirds rule.

CHAIRMAN: You might not be able to do it. You might not be able to get a two-thirds vote on a particular item. I think you are absolutely hamstringing the Legislature 'way beyond what is the intention, and I think you lose the whole purpose of the constitutional document, which is to set up your checks and balances. I think you throw the weight 'way over on the Governor's side.

Excuse me, I am talking too much. Commissioner Smith, do you want to say something?

MR. J. SPENCER SMITH: On the question I wanted to ask you, provided I understood you correctly: you said you thought there should be single commissioners except in certain instances. I was wondering whether you had in mind what those instances were, could be, or might be?

MR. ERDMAN: Again, you are asking me to support a position that I personally do not approve of. I personally believe that every executive department should be headed by a single executive appointed by the Governor, so I am in a little difficult position to outline which departments should not have a gubernatorially appointed head, and which ones should.

MR. SMITH: May I pursue that a little further? How far would you go with that? I have in mind, for instance, the department or council that I am the head of, and I would think that it would be very unwise to place the power that we exercise in the hands of any one man. I don't think he could either by knowledge or by experience exercise it in the best interest of the State. Now, as you know, we are part of a department with a single head. That's all right as it is set up today, but if you were to abolish those councils or put that power in the hands of one man, I think, from personal experience, it would be very unwise, because he has to pass on the valuation of the riparian rights throughout the State and that takes a lot of knowledge, it takes a lot of experience. Where you have the combined knowledge of a number of men living in various sections who know values, it brings out the true value to a greater degree than if you leave it in the hands of one man. You would be giving him too much power, I think. And not only that, but the man himself would not have the opportunity for knowing these values and conducting the rest of the work in the department.

CHAIRMAN: Commissioner Erdman, do you remember the wording in the 1944 revision?

MR. ERDMAN: Sorry, I don't. You probably do and I don't. You were part of that revision, Senator.

CHAIRMAN: I will show it to you. In the meantime, Commissioner Miller would like to ask you a question while I dig out that exact wording. Commissioner Miller?

MR. SPENCER MILLER, JR.: Commissioner Erdman, I would like to pursue the discussion which you began concerning the right of succession. You have stated what the position of our New Jersey Committee on Constitutional Revision is and your own personal position, and that they are at variance. You have raised the point that providing a right of succession would vest in the Governor of the State of New Jersey more power than any chief executive in the other 47 states. May I precede the question I will put to you by making this observation, arising out of the testimony of Governor Driscoll when he appeared before this Committee a few days ago? He said that the concern was not to make a strong Governor, *per se*, but to strengthen all of the three departments of government. If we were considering the matter of the right of succession standing separate and apart from other balances in the Constitution, you might produce quite conceivably, as you say, a Chief Executive with inordinate power.

I take it that none of us is desirous, in revising the Constitution of 1844, to produce either a document or a Governor whose powers were inordinate or out of balance with the requirements and the responsibilities of his office. My question therefore is this: Do you not believe it is possible so to define the powers of the Governor under a new Constitution that he will have responsibility, be able to administer efficiently and economically the affairs of the administrative side of government, without giving him inordinate power, and at the same time giving him the right of succession? In other words, is it not possible that as we build up the power of the Legislative and Judicial Branches of the government that the right to succession, standing not alone but in the total context, would not make the Governor the most powerful chief executive in the 48 states?

MR. ERDMAN: I don't see how we can do that if we are going to carry out these other recommendations because, just as Senator Young and Senator Van Alstyne very aptly pointed out in regard to the executive budget we are proposing, that would vastly increase the power of the Governor—for instance, in that line. The same situation will exist with the power of appointment. We are greatly increasing the power of the Governor in appointments. The recommendation is being made that all appointments be taken away

from the Legislature, and every step in the recommendations of the Legislature in 1944 and of the Hendrickson Commission in 1942 and of the Committee for Constitutional Revision, of which you, Commissioner, were also a member—every step has been designed vastly to increase the powers of the Governor.

Now, I don't think power can be divided up after you have already conferred it upon the Governor. I don't see what your device would be to take that same power away. That is why, to me, it becomes more important than ever to make sure that the Governor be removed from all suspicion that he is in any way using these vast powers for any personal ambition. I think he will be charged time and time again, if we don't have a prohibition against a second successive term—he will be charged, rightfully or wrongfully, time and time again with simply using these powers to perpetuate himself in office. It will be the charge most often made by the party out of power. It will, in my opinion, really lessen his ability to use these vast powers in the public interest, probably in the very way in which he himself may wish to use them, because the suspicion will be there. I can't help but feel that very strongly.

MR. MILLER: May I pursue that with another question, Commissioner Erdman? New Jersey, among all of the states, is the only one where you have a Governor elected for a period of three years who is denied by the Constitution the right of succession. It has been the limitation—

MR. ERDMAN: There are a lot of other states where a Governor cannot succeed himself.

MR. MILLER: I say, where elected for three years.

MR. ERDMAN: We are the only state where he is elected for three years?

MR. MILLER: That's right. And as Governor Hoffman reminded us yesterday, it is too long a period for a poor Governor and too short a time for a good Governor. The point is this: if that limitation upon the right of succession is regarded as one of the factors which has made for a weak Chief Executive, the addition of a single year, namely, extending it to a period of four years, would seem to rest on rather slender grounds logically when the fact is that you have deprived the Chief Executive of any continuity in administrative policy.

Again I come back to the question as to whether or not it is not a part of our task to resolve this apparent dilemma by devising some checks and balances, if you will, to see to it that we do provide a Chief Executive strong enough and responsible enough to do his job and yet not so strong that he in a sense imperils the people's liberties? And it is an interesting thing, and I add this

only by way of a footnote, that at least of the Governors who have presently been before us, all of them have been in favor of the right of succession. Thus far—I think I am correct, Mr. Chairman—thus far, we have had only one indication from one former Governor who finds himself in opposition to the principle of the right of succession.

MR. ERDMAN: That may be so, but that doesn't change my opinion.

MR. MILLER: I realize that, but I am just wondering whether, from an administrative standpoint, we have not the genius to set this thing in a kind of balance so that the Governor can have sufficient power to govern and yet not so much power that he presently becomes an autocrat.

MR. ERDMAN: Well, I think that is just what your Committee is going to have to wrestle with. That is the reason I want to make the point very strongly again, that if you are going to do two things—both increase the present powers tremendously, as you agree, I know, would be the case if all these recommendations were adopted, and at the same time permit the Governor to succeed himself—if you are going to do both those things, I think there is a lot in my argument. On the other hand, if you are going to decrease some of these powers by further checks and balances or the continuation of some existing checks and balances, then, of course, you naturally weaken the argument of those who say that the Governor should not succeed himself. I would see no particular objection to the Governor succeeding himself under our present Constitution, because he has not, naturally, the powers he would have under this new constitutional recommendation.

CHAIRMAN: As much as we like to hear from our friend, Commissioner Erdman, we have a few other people who would like to be heard.

Are there any more questions? . . . Commissioner Smith, do you have another one?

MR. SMITH: I would like an answer to the question I raised, if Commissioner Erdman will give it to me.

MR. ERDMAN: You mean, on which departments?

MR. SMITH: I am thinking particularly of the one I know.

MR. ERDMAN: Well, the one that you are in intimate contact with at the present moment is headed by a single commissioner, which I believe would comply with the requirements of the proposal made by these various groups.

MR. SMITH: Well, if it is so set up—if the present system were continued?

MR. ERDMAN: I think that your present system—it is only my opinion, I am not a lawyer, remember that—but it would be my

opinion that your present organization could be continued, even under the recommendations made by these various groups.

MR. SMITH: But remember the difference is this: if we put in the Constitution a single commissioner of the department or division—

MR. ERDMAN: Well, that is what you have now.

MR. SMITH: I know, but that was by legislative enactment which included all these councils and set them up, but in the Constitution it provides the opportunity for a single commissioner to function without the Legislature having the power to set up these councils.

CHAIRMAN: Regarding the point I made some time ago, referring to the 1944 revision power, you will notice here (*handing Mr. Erdman a paper*) that that expressly states what you say, but puts in the one clause, "unless otherwise provided by law." Would that be satisfactory? Do you think that would be a good idea, or do you want to leave out that one clause?

MR. ERDMAN: I would leave out that one phrase, but my Committee on Constitutional Revision would not approve that, I am afraid. We might as well all speak frankly. We know that phrase was put in there so that we could continue the Department of Agriculture as is, and the Department of Institutions as is. That is why it was put in there. But if we believe in executive power or executive responsibility, and I think we believe in it, I see no reason why one department is singled out and has to have a board, and another department has not. I just don't think that way. I just can't divide up responsibility that way.

MR. SMITH: I am inclined to think, from my experience over all these years and that goes back over 30 years, that if our department is going to function and protect the school funds—riparian revenues being dedicated to school purposes—and if they are going to receive value for the riparian rights and the riparian rights are going to be conducted as they should be, it would be a grievous mistake to place that power in the hands of a single commissioner, a single man.

MR. ERDMAN: As I said a moment ago, I see no reason why, with the provision of the 1944 Constitution—even leaving out the clause, "except as otherwise provided by law"—you would still not be able to have the type of set-up you have in your department, because all administrative powers are under the control of the commissioner, if he wishes.

CHAIRMAN: Mrs. Barus?

MRS. BARUS: I don't think this is exactly a question, Commissioner Erdman. I would like to make a point. Going back to the powers of the Governor's succession, it seems to me that if he is

really and logically to carry the thing through and have full executive appointment power, he will have to appoint the heads of departments of a highly technical and skilled nature, such as the Department of Education, Department of Health as now set up, and the Department of Institutions and Agencies. All those require, not just men who have been useful in the party, but men who are outstandingly well qualified in professional fields. It seems to me that if the Governor can offer them only four years, with the absolute certainty that they cannot be continued, or at least that he will not be able to continue them, no matter how good a job they do, then he certainly would be handicapped in finding men of the right caliber. On the other hand, he would be able to appoint men who would find that they could entrench themselves in some political way and get, not that job, perhaps, but another job.

In other words, from the point of view of picking the best qualified people for highly important and somewhat less political jobs in the State, I believe that offering them the possibility of eight years in which to formulate their policies and to build up their personnel and to set up their major lines of work would be of very great advantage. Do you think that might be so?

MR. ERDMAN: No, because I don't see any advantage. Who is going to guarantee to them that the Governor will be reelected? If that is the case, then you do exactly what I said. It doesn't impress me, but rather alarms me, that you therefore would make it more or less necessary for them to take part in building up a machine whereby they would be in there for eight years rather than four.

MRS. BARUS: But isn't it true that if a machine is built up, you don't necessarily have to get the same man in again? Wouldn't you say that even without the right of succession we have had machines in this State that have put in people over and over, no matter who the particular individual might be? I am not making any special allusion here. I think it has happened in many states. A notably outstanding example of the machine is Huey Long in Louisiana, in which state there was probably the nearest approach to a real fascist dictatorship that we have ever had. Yet, in Louisiana the Governor cannot succeed himself. It didn't bother Huey Long at all, nor his machine.

MR. ERDMAN: That is very true, but this would just be another device to aid that very thing if we had a Huey Long here.

MRS. BARUS: Well, I can't agree with that, but I won't keep on arguing with you.

MR. YOUNG: Commissioner, how long do you consider a reasonable time for the Senate to act?

MR. ERDMAN: On appointments?

MR. YOUNG: Yes.

MR. ERDMAN: I suppose anywhere from a month to 45 days. I don't think that there should be any very great difference between 30 days, 45 or 60. The main point is that they should have to act and not just be allowed to drag on forever.

MR. YOUNG: If they didn't act, what would you say the Constitution should provide?

MR. ERDMAN: Well, I think a reasonable suggestion was that made by this committee and also by the Hendrickson report—that a man would be automatically confirmed, so to speak, after a reasonable lapse of time.

MR. YOUNG: If he had not been rejected by the Senate?

MR. ERDMAN: Yes.

MR. YOUNG: Now, with these recommendations that you and your group of organizations have made, do you feel that the old theory of checks and balances between the Judicial, the Legislative and the Executive Branches is going a little bit out of balance?

MR. ERDMAN: Well, we are certainly greatly strengthening the Executive Department.

MR. YOUNG: Where are you taking it away from?

MR. ERDMAN: What?

MR. YOUNG: Whose powers are you taking away?

MR. ERDMAN: Well, you naturally will have to take away a little power here and there, and I would say the Legislature is the one who is sacrificing the most.

MR. YOUNG: You are taking it away from the Legislature and giving it to the Executive?

MR. ERDMAN: Yes.

MR. YOUNG: Now, I wonder if you would expound a little bit on this theory of allocating the functions, etc., of the various departments. Just what do you mean by that? I don't want to argue with you; I want to ask you questions.

MR. ERDMAN: Well, administrative reorganization, as we all know, because we have all been working together on this for the past three years—

MR. YOUNG: Is your theory along the lines of the Hendrickson recommendation?

MR. ERDMAN: Yes, or the other. They are both the same. Both committees, as I said in summing up the recommendations, are in no degree different on this point. They would have the initiative come from the Governor. He would present the reorganization plan to the Legislature, more or less the way the Governor has been doing in the last three years. Former Governor Edge, and Governor Driscoll this year, together have presented, for instance,

the administrative reorganizations that have been accomplished over the last three years.

That is, in effect, executive initiative, but it had to be done by law because of our existing Constitution. I think the future procedure would be to do practically the same thing by executive order, which could, of course, be rejected by the Legislature. If it were not rejected, it would, of course, have the effect of law.

The Governor would present his plan to the Legislature. He would gather together the separate departments which now exist, much as has been done in the past few years, and place them under one new department. And then if the Legislature disapproved of the particular grouping or the particular assignment of functions, it would naturally, under the provisions suggested, have the right to say "no." And then it would have to be revised in accordance with their wishes.

MR. YOUNG: I don't know that I got an answer to the other question I asked. Do you feel our three branches of government are put out of balance by the giving of this group of powers to the Governor?

MR. ERDMAN: No, I don't feel it is out of balance as long as we retain a very essential check, and that, as I said, is this check against succession. To me the whole thing ties together.

MR. YOUNG: I see.

MR. ERDMAN: Thank you very much.

CHAIRMAN: May I ask one question? In your report I don't think you mentioned—did you consider the possibility of a Lieutenant-Governor and, if so, would it be the opinion of your organization and your own?

MR. ERDMAN: Our organization has not presented a recommendation for a Lieutenant-Governor. They have presented rather the recommendation that some state department head be designated by the Governor to act as Governor when he was not there.

CHAIRMAN: Instead of the President of the Senate?

MR. ERDMAN: Yes.

CHAIRMAN: Why is that?

MR. ERDMAN: I think it was the same principle, more or less, that the Hendrickson Commission had agreed upon, namely, that a Governor, when turning the affairs of the Executive Department over to someone else because of absence or whatever the reason might be—where he was doing it of his own free will, so to speak—should be at liberty to pick one who definitely was his choice.

On the other hand, if he were to die or were to be declared incapable of continuing as Governor, whatever the circumstances might be, and in effect vacated the office, then I think, of course, the Governor should have no right of designating who his succes-

sor should be, and in that case the Legislature during the interim, as proposed by this committee, should have the right to designate a temporary successor.

CHAIRMAN: Any other questions? . . . Thank you very much, Commissioner Erdman. Have you a copy of your report for each member of the Committee?

MR. ERDMAN: Yes.

CHAIRMAN: Would you leave that with Mrs. Barus?

MR. ERDMAN: Yes.¹

CHAIRMAN: Commissioner, who next from your organization would like to speak?

MR. ERDMAN: Mr. John Bebout.

MR. BEBOUT: If you don't mind, I wish you would hear Professor Bennett Rich, of the Political Science Department of Rutgers, who has been working with the Committee on Revision.

CHAIRMAN: Professor Rich, would you take the chair?

MR. BENNETT M. RICH: Senator, I am a member of the faculty here at the University. The University does not authorize me to speak, nor has it put any brake on my speaking.

I am in substantial agreement with the major portion of the recommendations made by the committee—

CHAIRMAN: You want to be careful. Your boss is here.¹

(Laughter)

MR. RICH: I see him here.

. . . Although I disagree with one point made this morning. I might add that you may have seen me around here the last two or three days. I have listened to a major portion of the testimony given by the Governor and former Governors and, of course, I have done a certain amount of reading on the subject.

I feel very strongly on a few points I should like to make. One is in connection with this question of the term of the Governor. Like Dr. Erdman, I don't agree with the recommendation made by the Committee on Constitutional Revision but, unlike him, my position is diametrically opposite to his. In other words, I feel that the point made by Governor Moore yesterday morning, that there should be absolutely no limitation on succession, is the right one. I think Mrs. Barus made the point when Governor Larson was testifying the other morning, that actually when you limit the right of succession the only persons being limited, the only group being limited, are the people themselves.

The major portion of the textbook writers—and my approach will probably be a little academic, I might add—agree with that.

¹ Excerpts of the report relating to the Executive Article appear in the Appendix to these Committee Proceedings.

¹ The reference was to Robert C. Clothier, President of Rutgers University, the State University of New Jersey.

I should like to read just one paragraph from a standard work on state government written by Dr. W. Brooke Graves, who summarized the argument presented for and against this problem of limitation on the right of succession. He makes this observation (*reading*):

"If one believes in democratic government, a restriction on reeligibility seems unjustifiable; the people should have the right to reelect an executive of whose services they approve, and the opportunity to refuse reelection to one of whose conduct they disapprove."

I should like next to comment on the problem of the time of election. That hasn't been mentioned more than once or twice, I think, during the testimony that has been given. The general feeling is that the election of the Governor should take place in the odd-numbered years, rather than to run any risk of confusing it either with the Presidential election or with the Congressional election at which the national issues are the major subjects. Again, if I might quote Dr. Graves on this point, he says (*reading*):

"The holding of state elections to coincide with national elections is unfortunate, because it ordinarily means that little or no serious thought will be given to state problems. Citizens will vote for their preferences in national offices and will without much consideration support the same parties for the state offices, whereas the problems of government in any one of the states are large and significant enough to the well being of citizens to warrant a decision based upon their own merits. The selection of state officers should not be merely an incidental aspect of national party contests."

Another point that has not been mentioned is this question of the date of taking office. I think the provision in the present Constitution which calls for the Governor to take office on the third Tuesday of January is better than the one appearing in the 1944 draft which called for the Governor and the Legislature to take office at the same time. The only recommendation I would make there is that there be a slight tightening up of the present clause. The present clause states that the Governor's term expires on Monday and a new Governor comes in on Tuesday. There is a lapse of one day there. The advantage of having the Governor inaugurated at a date later than the date the Assembly and the Senate take office is that in case there is a dispute, it gives the Senate and the Assembly an opportunity to take action.

Next, I should like to mention the importance of the Committee's working out an air-tight clause on this matter of vacancy. It is true that in a hundred years of experience in New Jersey no Governor has died. There has been a little confusion two or three times when a Governor left office. But there have been enough instances throughout the United States to make important this question of getting a good clause on succession and of getting a clause covering the Governor-elect in the event of his death. I think it is important that a lot of attention be given to that. I

might add that in my opinion the State would be making a step backward if it established the office of Lieutenant-Governor. I am not happy about the present method of succession whereby a member of the legislative body succeeds to the administrative chair. On the other hand, I don't think the solution of the problem is the establishment of the office of Lieutenant-Governor.

CHAIRMAN: What do you think the solution is?

MR. RICH: I would be in favor of the committee's recommendation in that respect—that during the normal period of the Governor's office, in case of his death, disability or absence from the State, that a member of the administrative department take over temporarily, the point being that the policies established by the Governor would continue without any disruption. I think it might be that in the event the Legislature strenuously disliked the choice made by the Governor for his successor, they should have the authority to elect a temporary Governor. In other words, the Governor would designate the certain man who would succeed him in the event of his death or absence. Now, if that person who was the No. 1 successor did not meet with the approval of the Legislature, I think it should be in their power to select a Governor who would serve until an election could be held.

I don't believe that an administrative officer should hold office for a great length of time; that is, if a death occurs, we will say, in the first or second year of the Governor's term, an election should be held as soon as possible.

MR. ROBERT C. CLOTHIER: May I ask a question? I understand, Professor Rich, you said you do not approve of a Lieutenant-Governor. I understand that. I am not sure I got your reason for disapproving. You offer a certain alternative course of action.

MR. RICH: Dr. Clothier, the Lieutenant-Governor's job has been more or less that of a fifth wheel. He is an administrative officer, yet he exercises few administrative powers. In most states he is put in the position of presiding over the Senate, where probably he may have no qualifications for that job. And if he doesn't preside over the Senate, unless he is given definite administrative responsibility, there isn't anything for him to do. If he is given definite administrative responsibility, there always arises the question: Is he going to be able to carry out the responsibility? In other words, he has been elected, it is true, by the people. Would he be the choice of the Governor to head up an administrative department? That hasn't been tried very often. It might work, but I think the chances in general are against that for a succession scheme.

MR. CLOTHIER: I don't want to delay the discussion, but may I ask another question *a propos* of this same point?

CHAIRMAN: Yes, sir.

MR. CLOTHIER: It seems to me that the Governor is a very heavily burdened official, and much of the work that he does is not of primary importance to the State—such as making speeches, as Governor Driscoll said the other day. Do you think, Professor Rich, that the appointment of a Lieutenant-Governor might relieve the Governor of some of these secondary duties, so that the Governor could devote his entire time to the major responsibilities?

MR. RICH: There is something to be said, certainly, for the Lieutenant-Governor taking over some of the social responsibilities, such as laying cornerstones and those things that the Governor might do. I think ordinarily that that policy, however, has not been successful in the states having a lieutenant-governor. There is always a tendency towards a certain amount of jealousy.

I would certainly admit that the Governor has too much to do, and I think a better way to solve that problem would be to relieve him of some of the details in connection with his administration by permitting him to have as his No. 1 assistant an expert in business management. In other words, I would like very much to see the State of New Jersey introduce the system which has been operating in Minnesota for the last eight or nine years—that of an Administrative Manager for the State Government to whom the Governor could delegate as much or as little of his administrative duties as he wanted, reserving to himself, of course, the right to determine the policies of the State and make the major decisions, but letting this Administrative Manager handle all the business details of running the State Government. That frees the Governor so that he can really be representative of the whole people. It seems to me that it would solve a lot of the problems in connection with this question of giving business management attention to the State.

CHAIRMAN: Professor Rich, I think Dr. Clothier has drawn a very interesting point. I don't know whether you used that particular word advisedly or not, Dr. Clothier, but you used the word "appoint" a Lieutenant-Governor. Did you mean "elect?"

MR. CLOTHIER: I meant the "creation" of such office.

CHAIRMAN: I think you have the germ of a very excellent idea which has not been brought out at any point. I am just throwing out the thought here: suppose we did something that I know does not exist in any other state, and even made it a constitutional office—created the office of Lieutenant-Governor but allowed the Governor to appoint such a person by and with the consent of the Senate? Because one thing that is certainly a fifth wheel is when the people of the United States elect a Vice-President; it is like trailing a little cart behind an elephant. The same thing when the people of the State elect a Lieutenant-Governor. Why not elect a Governor and then allow this Governor, if he sees fit, appoint a

Lieutenant-Governor by and with the consent of the Senate, to assist him with his tremendous amount of duty; and, if you please, let the Legislature by legislation, after consultation with the Governor, designate the duties of this Lieutenant-Governor? I think there might be the germ of an idea there that we could very well explore. I am not throwing it out as my final opinion, but I hope that the Committee will take it under advisement.

MR. RICH: One of the major difficulties in the election of a lieutenant-governor is that he is chosen because of political availability and without any regard at all to his administrative capacity.

CHAIRMAN: Have you any more statements to make?

MR. RICH: Yes, I would like to go on with one or two points.

I would favor extending the veto power of the Governor—that is, requiring a two-thirds vote of the Senate to override the veto.

And I favor very much, relative to this problem of effecting reorganization of the departments, consolidating them into—well, the number 20 has been mentioned quite often during the last two days, and it seems to me that that is as reasonable as any; giving the Governor the authority to make the reorganization, although giving the Legislature authority by action of either House to kill any reorganization suggested by the Governor; placing a single executive at the head of each département, although making it possible for advisory boards to assist the Governor; requiring that any orders issued by the Governor—and this is a point that has not been mentioned, I think—any orders issued by the Governor while he is conducting his reorganization, be published. In fact, I think it would be well if all executive orders issued by the Governor were published and given state-wide distribution.

Finally, in connection with the question of administrative reorganization, I should favor an Administrative Manager for the State.

CHAIRMAN: Will you submit to a few questions, Professor Rich?

MR. RICH: Yes.

CHAIRMAN: Commissioner Miller?

MR. MILLER: Professor Rich, you said at the outset that you regarded this question of succession as not inimical to the whole problem of setting up a balanced State Government, as I interpreted your remarks, and if the principle of unlimited succession for the Governor should be written into the Constitution, that you do not think that would so throw out of balance the relationship of the Executive to the Legislative and Judicial Branches of the government as to impair the effectiveness of what you might call integrated government. Am I correct in that assumption?

MR. RICH: You are correct, sir.

MR. MILLER: May I further pursue that by asking this question: whether, as a student of political science and as you have studied this question of the right of succession in other states, and as you have studied the development of the reorganization of state government, vesting more administrative responsibility and power in the executive, you find that in cases where these increased powers have been given to the executive that the right of succession has been tied up in any sense with these new and additional powers? Have they been linked together—that is, if you gave more powers, you limited them or set up a check by prohibiting this right of succession?

MR. RICH: No, I have not.

MR. MILLER: The third question has to do with this suggestion that comes out of the practice in the State of Minnesota. In the appointment of an administrative manager, is it not a fact that that administrative manager has not only taken a large share of the business administration from the shoulders of the governor, but that in fact he has been a coordinator of the various functions of governor and has come to enjoy, at least the phrase if not the fact, of being the lieutenant-governor? Doesn't he virtually become a person who would be performing many of the functions that a lieutenant-governor would perform if the lieutenant-governor had something more to do than just being a kind of social accessory to the governor's office?

MR. RICH: I am not sure, Commissioner. I do know the administrative manager is looked upon as the No. 2 man in the state.

MR. MILLER: Yes, as during war-time Mr. Byrnes was regarded virtually as Assistant President; that is, he assumed for the President of the United States during the war-time emergency many of these burdens as coordinator of the National Government and came to be known as the No. 2 President, so to speak.

CHAIRMAN: How is this man elected?

MR. RICH: He is appointed by the governor, Senator.

CHAIRMAN: By and with the consent of the Senate?

MR. RICH: That is correct.

CHAIRMAN: And his title is . . . ?

MR. RICH: I think it is administrative manager; in fact, I am sure of that. He is always referred to as the business manager of the state. That is provided for by legislation in Minnesota, I might add, rather than in the constitution.

MR. YOUNG: Is his power set up by statute?

MR. RICH: By statute, correct.

MR. MILLER: This is my last question: Would it be your feeling that that should be written into the fundamental law, or that

we should follow the Minnesota practice and make it a statutory provision?

MR. RICH: I would be opposed to writing in detail what the administrative manager's functions were. I might add that this clause is thought of sufficiently highly by the academic and public people who wrote the "Model State Constitution" that they have included it in the latest revision of that constitution—just making it one simple clause, saying there shall be an administrative manager appointed by the governor and responsible for such administrative duties as the governor may assign him.

MR. YOUNG: It wouldn't make any difference what you called him—whether you made him administrative manager or lieutenant-governor, would it, as long as he had the same powers?

MR. RICH: That is correct.

MR. YOUNG: It is just a question of what you call him?

MR. RICH: Yes, that's right.

MR. SMITH: May I ask this question? In regard to the merger of these 20 departments, have you personally followed through any of the workings of these commissions in the State, or the boards that are set up independent of being part of the department?

MR. RICH: I have general knowledge only, Commissioner. I have not followed through specifically any one.

MR. SMITH: The reason I ask that is because I have had all these years' association with them, and I have always been impressed with the fact that New Jersey had one of the best governments of any state in the Union because of these boards. Naturally, everything goes according to the personnel of the board. At the Princeton Surveys, the professor at Princeton who was assigned to investigate our board gave us a fine, glowing tribute. But aside from that, the thing that impressed me was the fact that the people with whom we did business—that is, who had to come before us—made the statement that they liked that and that they found it very satisfactory.

I am inclined to think that there is too much theory about this question of departments, so far as changing our state set-up is concerned and the way that we work. I was just wondering whether you had personally gone into it with a scientific knowledge and made comparisons from that angle.

MR. RICH: By reading and hearing I know that there are several departments in New Jersey headed by commissions which have very good reputations. In general, however, taking the country as a whole and considering state government and city government, there is a growing tendency, and there has been for the last 50 years, to abandon the running of departments by commissions,

and that abandonment has been effected by replacement with single heads.

MR. SMITH: That is getting away from democracy a little. I am afraid that you are allowing the citizens to forget their responsibility to sit with the government, and they are not being acquainted enough with its work. However, that is just a thought. Thank you.

CHAIRMAN: Senator Young?

MR. YOUNG: Professor, do you know of any state in the Union, that has powers such as you have recommended in the Executive Department, with the exception, I might add, of the war-time powers of the President?

MR. RICH: Well, Senator Young, at the beginning of 1917 Illinois effected a reorganization of its state government, and since that time about 30 states have followed suit, in each case strengthening the office of governor. No one of them has gone quite as far as the recommendation submitted here. I think New Jersey, for example, has only one official who is elected by the people. That is something that is generally commended. Now, if those officials presently elected by the Legislature were placed in the hands of the Governor, that, I think, would effect much more responsible administration.

MR. YOUNG: Now, in regard to the term, I would like to ask you this, Professor: Wouldn't it be rather easy for a man elected Governor of this State—with all these powers, and being placed in the position of being able to appoint the heads of all these departments and, as stated, to remove any officer upon hearing—to continue in office, because he would have quite an organization after that, with all these powers, wouldn't he?

MR. RICH: Senator, that doesn't present a problem so far as I am concerned. It seems to me that the business of the State has grown so much that one of the primary things to be done is to introduce a business organization, and the only way to do that is to give some man the power actually to run the State. Now, that doesn't mean he is setting up a dictatorship, or that he is setting up a political machine. People always have the opportunity at the next election to kick him out. So long as they have that opportunity, that removes the element of bossism—not completely, of course.

MR. YOUNG: Well, can you imagine, under the theory that you express, a motor vehicle agent, or a highway department maintenance man, or any one of the employees of any of the departments, going out and saying the Governor is no good, which it is the right of any citizen to do, and speaking for another candidate—under these powers?

MR. RICH: I feel that first of all, with this additional power

given to the Governor, I would favor a strong system of civil service, which in itself would do much to prevent the Governor from building up a political machine. And under those circumstances, an individual who is a member of the state administration, although he should have the opportunity to express his feelings, nevertheless probably should not go out on the stump and argue for or against a particular candidate for office.

MR. YOUNG: In other words, a man connected with the State Government should not have his right to express his feelings on candidates—

MR. RICH: I would agree with the principle which the Federal Government has in that respect—that any employee of the Federal Government who is under civil service has every right to express his opinion to his friends, to anybody who wants to know how he feels about the administration, but that he should not go out on a public platform and participate in an election.

CHAIRMAN: Any further questions? We want to get along and we have taken quite a bit of time. . . .

Thank you very much, Professor Rich. Is there anyone else of your committee who wants to speak? Professor Bebout?

MR. BEBOUT: I probably ought to be identified as an “escaped professor,” because I am now Assistant Secretary of the National Municipal League.

I think I would feel more comfortable if I can keep my general remarks down to a very few minutes and let you people quiz me on any of the points that have been raised so far and that I may emphasize just a little bit further. There is no point in “thrashing over old straw,” except so far as you want further elucidation.

Let me explain that I have here tentative drafts¹ covering a number of the recommendations that have been presented—not all of them. These drafts were framed by the Committee on Drafting and Research of the New Jersey Committee for Constitutional Revision, not as definite or dogmatic offerings of the committee, because the committee as a whole has not had opportunity to pass on them, to cross the “t’s” and dot the “i’s,” but rather as an indication of ways in which these recommendations can be put in concrete form. They are presented to you, therefore, in that spirit, tentatively, for whatever help they may give to you.

Now, I think as to some of the committee recommendations you could probably get more light from me and perhaps from other representatives of the committee after you have read these drafts and developed some reaction to them. Obviously, I don’t think it makes sense for me to sit here and read them to you. I have enough copies to leave with every member of the Committee today.

¹ The final drafts appear in the Appendix to these Committee Proceedings.

They are rough in the sense that they are mostly carbon copies, because we have not had time to mimeograph them, as yet. I would like, however, before you question me, to stress three or four points that have been discussed this morning.

On this matter of the right of the Governor to succeed himself, I personally agree with Professor Rich that there is no sense in any limitation. I say that because I would be glad if you want to question me further on it. I am not going to elaborate the argument at this time. In any event I will say this: I think it would be a very great disappointment to the vast majority of the members of the New Jersey Committee on Constitutional Revision and its constituent organizations if the new Constitution does not at least permit the Governor to succeed himself once. That is the specific request of the committee. At least one or more of the organizations are definitely on record in favor of indefinite succession. And Mr. Erdman, of course, has put himself on record as opposed to succession at all.

On the matter of administrative reorganization, I think it is worth while to put it on the record that the new Missouri Constitution provided for the allocation, by executive order, of existing or future administrative agencies and functions among the departments listed in the constitution. In one sense, as I recall it, that is more nearly absolute power than the power proposed here, because there is no specific provision for an automatic review by the Legislature. I assume that probably as a result of the general legislative power, it could alter the arrangement that the Governor had set up by executive order. The draft I will present to you on that subject departs in two or three particulars from the previous drafts. The Committee on Constitutional Revision, or rather the executive committee, at its last meeting, voted to change the dogmatic statement in the earlier outline of the proposals that it recommended, that the Governor should make these allocations and reallocations subject to a two-thirds veto of both Houses. This draft, following that relaxation, does this: it provides that the initial reorganization, once the Constitution is adopted, shall be by order of the Governor, subject to two-thirds veto by both Houses and, of course, the Schedule would provide for a certain date at which this initial reorganization should be completed. It is important that there should be no possibility of its not being completed within a reasonable time. But after that, the draft that will be presented to you provides that any executive order for reorganization which affects more than one principal department would be subject to veto by an adverse vote of only one House of the Legislature, on the theory that once you have the system established it is a good thing to provide some safeguard in the interest of stability. We don't want Governors coming in and, just because they have some

bright ideas, upsetting the whole administrative system. It is provided, however, that an order merely affecting the internal organization of a department should stand unless superseded by a concurrent resolution of both Houses—that on the theory which has been accepted for a long time, I think, that, in general, internal departmental organization should be primarily an administrative matter. In fact, a good many statutes leave it pretty much to the head of the department.

Just one more word on the general theory behind this principle of giving the Governor the initiative in the matter of administrative organization and reorganization. I think it was while Theodore Roosevelt was still Governor of New York and after he had had some experience in that office, that he remarked that administrative organization was essentially and by nature an executive function. That observation, in one form or another, has been repeated again and again by experienced governors and Presidents, because the very nature of a legislative body makes it difficult for it to do a comprehensive and disinterested job of reorganizing a sprawling administrative structure. Every department or agency necessarily has its friends in and out of the government, who insist that it somehow or other is different from all others and therefore ought to be excepted from an otherwise admittedly good general scheme. That department's friends have access to particular members of the Legislature, and other departments have other friends, and by a process of, shall we say, "mutual accommodation" they manage to prevent serious action.

A rather amusing testimony to this effect appeared in one of the first reports of the Economy and Efficiency Commission, of which Governor Edge, when he was State Senator before he became Governor, was chairman back about 1913. It quoted a letter received from somebody who was anonymous, which said: "Gentlemen, your plan for reorganizing state administration is an excellent one. The purpose is sound and I am in favor of it, but I want to call your attention to the fact that 'X' department is, of course, fundamentally different from all other departments and it should be exempted from this scheme." The report of the commission went on to the observation that they had had similar testimonies in favor of practically every other department.

So much, then, for this matter of administrative organization and reorganization, except on the matter of the head of the department. We have included in our draft a statement which I think is unnecessary from the point of view of law, but which is designed to meet the question which Mr. Smith raised a few moments ago. That is about the right of the Legislature to continue to have in, or associated with, one of these principal departments headed by

a single executive, a board or commission with specific functions. We have written into this draft the provision: "The Legislature may provide for boards or commissions of limited function to be incorporated in or attached to principal departments." There are various functions which would be perfectly appropriate, in some cases probably almost necessary, to give to boards to be attached to departments. One would be the sort of thing that Mr. Smith was talking about which involves *quasi-judicial* or legislative action. Another would be strictly advisory.

I think there is a tendency, erroneously, to discount the importance that an advisory board or commission, if it is a strong body composed of important citizens, can have. They can carry a great deal of weight in some cases, perhaps even more weight in correcting bureaucratic tendencies in a department than they would if they themselves, as heads of the department, were responsible for the development of such bureaucratic tendencies. If they are merely advisory, they don't have to be defensive in the sense that they are likely to become if the whole administration of the department is in the last analysis up to them.

Then, there is another very important function which I think may appropriately be given to boards attached to departments, and that is the recommendation of qualified persons to the Governor for appointment to the position of head of the department. If you are interested in an interesting prescription for that kind of power, you might refer to the recommendation of the President's Committee on Administrative Management concerning the appointment of the Director of Personnel in the Federal Government on recommendation by the Civil Service Board, which would have advisory and inspectional and other functions, but not administrative functions.

There are two or three parts of the committee's program which I think come within the scope of this Committee and which have either not been mentioned this morning or have been mentioned very lightly. One, which is merely listed, is the provision to implement the duty imposed upon the Governor to take care that the laws are faithfully executed. I will read this draft because it is very short (*reading*):

"The Governor shall take care that the laws be faithfully executed, and to this end shall have power, by appropriate action or proceeding brought in the name of the state in any of the judicial or administrative tribunals or agencies of the state or any of its civil divisions, to enforce compliance with any constitutional or legal mandate or restrain violation of any constitutional or legal duty or right by any officer, department or agency of the state or any of its civil divisions."

Before we discuss this very much, you may want to think about it. I will just give you the background of it very briefly. Our State Constitution, I believe, says that the Governor shall take care that the laws shall be faithfully executed. Authorities are all agreed that

that expression is practically meaningless in every state constitution. It conveys the appearance of responsibility or duty for which there is no implementation, unless or except to the extent that the Legislature may give the Governor appointing power, removing power, and other specific powers. The result is that the Governor and the public, very frequently I think, feel rather frustrated at the fact that the person who is nominally the Chief Executive and elected to that responsibility seems to have rather less real executive power, power to see that the laws are faithfully executed, than a great many other constitutional and statutory state and local bodies.

This provision would not give the Governor the right to issue a directive to anybody; it would not give him the right to cashier anybody; it would merely make available to the Governor any appropriate legal procedure by which he could secure a test in the courts of the performance or non-performance of any public office or agency of its public duty. The enforcement of this would depend finally upon court action.

If you are interested in the political theory back of it, it is in a sense an attempt to remarry the two phases, the executive power and the judicial power, which a good many persons think were improvidently separated when the Executive and the Judicial Branches were divorced from each other. The Executive has, theoretically, the active responsibility for seeing that the laws are executed. The courts make the final determination which enforces that responsibility. The courts by their very nature have not been and cannot be given the power to initiate action to this end. The Chief Executive in our system has, generally speaking, not been given the necessary tools with which to make good on his phase of the job.

Another recommendation of the committee which has only been touched on here is a provision to give the Governor an adequate investigatory power. Now, my drafting committee looked at this recommendation and looked at the recommendation to give to the Legislature an investigatory power, and decided that they might just as well be put together in one draft. It is a novel way of approaching it and I think it has a great deal of merit. The draft was very carefully considered by a considerable number of persons who have had experience in this sort of thing, and I think it eliminates some of the unfortunate verbiage that in 1944 resulted in considerable opposition to the investigatory power of the Legislature. This clause will be handed to you along with the others.

Another recommendation of the committee which has not been mentioned at all, but which I assume may probably be within the jurisdiction of your Committee, is the clause to provide that the Governor may order a bill which has passed one House, but after

a reasonable period of time has failed of passage in the other, to a referendum vote of the people; and that on the other hand, the Legislature by a majority vote of both Houses—assuming that the Governor has been given the veto power which will have to be overridden by an extraordinary vote—that the Legislature by a majority vote of both Houses might submit a bill to the people which had been vetoed by the Governor but had failed to get the necessary two-thirds vote to override the veto. You find substantially this provision in the “Model State Constitution.”

The original proposal to give the governor the right to submit a measure to the people that has passed one house but has failed of passage in the other, as far as I know, was made by the governor of some western state at a Governors’ Conference about 1909. Unfortunately, I have lost the volume of proceedings on that particular Governors’ Conference. I cannot identify it at the moment, but it was about that year. It was later picked up by Professor Ernst Freund of the University of Chicago, one of the leading authorities on administrative and legislative procedure, and recommended by him in one of his books and also in an article or two, and finally found its way some years later into the “Model State Constitution.” It was proposed by this governor at the Governors’ Conference and by Professor Freund, as I recall it, as a conservative alternative to the popular initiative which was then being agitated quite enthusiastically and was being adopted by a number of states. It seemed to me to have a good deal of merit and I have been surprised that it has never been picked up in some state as an alternative to the initiative which, frankly, I find pretty defective. I have not been able to work up much enthusiasm for the initiative, at least on ordinary legislation.

This proposition has been written up in the form of a tentative draft.

Then, there is one other item which, I think, comes within your jurisdiction, and that is the status of the constitutional civil officers. The committee flatly recommends that they all be eliminated from the Constitution. That doesn’t mean the offices would be eliminated, but the point is, it would make them subject thereafter to law. The most important of these civil officers at the state level are, of course, the Secretary of State, Keeper of the State Prison, Comptroller and Treasurer. I think we are all agreed, if we are to have a really responsible state administration, that those constitutional officers should be dropped from the Constitution and their functions made subject to the general scheme of state administration. I do believe that the Constitution ought to provide for one officer to be elected by joint meeting of the Legislature, and that is the State Auditor. I think it should be the State Auditor rather

than the Comptroller as he is known under existing law.

Then, the civil officers at the county level, of course, include the sheriff, the county clerk, the surrogate, coroners, and I suppose also the county prosecutors. . . . I forgot to mention the Attorney-General, who is perhaps the most important of the officers, in some respects, at the state level.

There will be an interesting article appearing in the next number of the *National Municipal Review* written by Ralph Temple—who, as I understand it, is doing some work for the Governor now on the courts of New Jersey—on this matter of constitutional county officers. It doesn't deal specifically with New Jersey but with these officers in other states, and you will find that the same situation exists pretty generally throughout the country. But he points out that these county officers, frozen into the Constitution, make it difficult or impossible to establish a completely responsible system of judicial administration, and I would add that they also make it impossible to create a completely responsible county government along modern lines.

I have already talked longer than I intended to and if you have any time, patience or curiosity, I would be glad to answer any questions.

CHAIRMAN: Does anybody want to ask Professor Bebout some questions? Commissioner Miller.

MR. MILLER: I would like to ask Professor Bebout whether or not, in this investigatory power that is to be lodged in the Governor, there would be any limit set? Could he investigate any officer, irrespective of whether he appointed him? Would this be in the nature of an inquisition or in the interest of efficient administration?

MR. BEBOUT: The draft that we have drawn, you understand, is a draft prepared by the Research and Drafting Committee of the Committee for Constitutional Revision and is in no sense to be taken as a draft approved by the committee itself; the committee has not seen it; but when you get a group of people doing a technical job of drafting they discover that the problem of draftsmanship necessarily has some influence on what might seem to be the policy to be carried out. Of course, the committee's original recommendations were necessarily made in the absence of the specific draft. Now, the draft that we have prepared would give each of the departments of the government—as a matter of fact, the Governor, either branch of the Legislature or the Legislature as a whole, or the courts, including the Chief Justice—the power, and I am reading now:

“ . . . to cause an investigation to be made of the conduct in office of any officer of the State or any of its civil divisions, and into the affairs of any office, department, board, bureau or agency of the State or any of its

civil divisions. Any person who shall refuse or willfully fail to obey any subpoena lawfully issued by such investigating body, officer or agency, or who shall refuse to testify or to answer any questions relating to any matter under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to hold any public office, position or employment. Any office, position or employment then held by him, etc. . . ."

I might say that every word and phrase of that was very carefully considered and discussed again and again. Now, any such clause as this has to be read, of course, in the light of constitutional law. This doesn't give anybody the right to ask anybody he might wish any fool question he wants to. The investigation must be of the conduct in office of an officer of the State or one of its subdivisions, or into the affairs of any such office, department, etc. "Any person," then, "who shall refuse to obey any subpoena lawfully issued by such investigating body"—the issue of lawfulness, of course, is a judicial question to be determined ultimately by the courts—"or who shall refuse to testify or to answer any questions relating to any matter under investigation . . ."—and again the issue in dispute as to the lawfulness of a question is one for judicial determination—"shall thereby become disqualified to hold any public office."

This doesn't give the right to make an indiscriminate investigation into the private affairs of anybody. On the other hand, it very clearly does write into the Constitution this principle—and I think it is important—that when a person accepts a public office or employment, he accepts a special obligation to the effect that his conduct in office, and I would say also his personal conduct, shall be so far above suspicion that it does not reflect on the public trust that he has accepted. It is writing into the Constitution that he and his life shall be above suspicion. This principle, incidentally, is pretty well stated, as I recall it, in an opinion by Governor Franklin Roosevelt at the time of his dismissal of Sheriff Farley in New York, in which he pointed out that a public officer who had for a period of years an income from his office which was known to the public to be limited, and who was living on a scale which was obviously many times beyond any that could be explained on the basis of his regular income, has an obligation to the public to make sufficient explanation, if questioned, to indicate that the source of his additional wealth is innocent.

I know there are people who say that that is a gross violation of a person's right of privacy. But my point is that if a person wants to preserve that right of privacy, he doesn't need to become Sheriff of New York County or take some public office or position.

MR. MILLER: One other question, Professor Bebout. In augmenting the powers of the Governor as you have suggested, do you think it is going to throw out of balance the relationships of the other two departments of the State Government, or is it possible

to do as Governor Driscoll has suggested—strengthen the powers of all three divisions of government and thereby make a more efficient instrument of State Government?

MR. BEBOUT: I am glad you asked that question. I think the Governor is absolutely right. As a matter of fact, I think the recommendation of this committee for each of the departments, taken together, would for the first time give New Jersey a Constitution which had the kind of balance contemplated by what the authors of the classics have described as the separation of powers or balanced government theory. There is one thing upon which those people are all very clear—and you can read Madison, Hamilton and John Adams, who, I suppose, are the principal architects of the theory of balance in this country, or for that matter, go back to John Locke—and that is that in a government of separated power or balanced power, the position of the executive is extremely important, and that it simply does not work unless you have a strong executive. Fortunately, in drafting the Constitution of the United States, they provided for a strong executive, and you have three departments of substantially equal power.

It is not surprising, therefore, that of all of the governments built on that principle, the United States Government has been, on the whole, the most successful, and the state governments have been successful in decreasing degree—I should say, in general, other things being equal—to the extent that they have wandered from that model. New York State, for example, which, according to most informed students, has one of the best state governments in the country, has one of the best balanced governments from this point of view. From the beginning, the Governor of New York has had about the strongest constitutional position of any of the other governors. John Gunther, in his recent book, *Inside America*, makes the exact statement that New York state government is by far the best. Now, there are a number of reasons for that. I would be the last one to claim that it is due only to the fact that they applied the separation-of-powers principle correctly, but it is in my opinion an important consideration. The Governor of Massachusetts was put in a stronger position at the beginning than the governors of most states, due very largely to John Adams, who was the principal draftsman of the first Massachusetts Constitution, which is still substantially in effect. Adams later lived to regret the qualification that he imposed on the responsibility of the governor through the council. That, he said later, was a mistake.

CHAIRMAN: Senator Barton.

MR. CHARLES K. BARTON: Referring back to the investigatory power of the Governor, you read what appeared to be a statement—I should say, probably a clause—as to the power of investi-

gation, and then you outlined the powers. Do you propose to put that in the Constitution?

MR. BEBOUT: I do.

MR. BARTON: I am of the opinion, and always have been, that the Governor should have those powers unquestionably, but because of the lack of flexibility which you will have in the Constitution if you had it there, I thought it could better be handled by having the Legislature legislate and from time to time make it fit the circumstances, giving the power, of course, to the Governor, too, to investigate.

MR. BEBOUT: Of course, the trouble with that is you can't by any means count on the Legislature's doing that. It is only in recent years that the Legislature has given the Governor of New Jersey anything like adequate—

MR. BARTON: Can you count on the Governor doing it? You say you can't count on the Legislature.

MR. BEBOUT: You suggested that the Legislature should give the Governor the investigatory power. I say you can't—

MR. BARTON: No, outline the operation.

MR. BEBOUT: This and any other clause of the Constitution is susceptible of elaboration by legislation, but I think we have succeeded. We certainly tried in this clause, and it was asked in all the others, to include only matters which we regarded as fundamental, in leaving any question which might be susceptible of different treatment, depending upon different circumstances, to legislative elaboration. Now, if we haven't been successful in defining this fundamental, then it may be subject to—

CHAIRMAN: You will have to speak louder. The stenographer can't hear you.

MR. BEBOUT: I am sorry. Is there anything I can repeat now?

CHAIRMAN: Anything further, Senator Barton? Does anyone want to ask anything?

MR. FRANK S. FARLEY: I have a question, sir. Professor, do you think the Governor of New Jersey has powers comparable to the governors of the other 47 states?

MR. BEBOUT: No—that is, not to all of them. He has as much power as some, and in some cases more than a few of the others, but he certainly is not as powerful as a number of them.

MR. FARLEY: Can you name me the states where the Governor has more power, and outline generally what that power is?

MR. BEBOUT: Well, in the majority of the states, the Governor's veto is stronger because it can be overridden by a two-third, or in a few cases, a three-fifth vote of the Legislature.

MR. FARLEY: In those respective states, does the Governor have the power to appoint the judiciary?

MR. BEBOUT: Not in most of them, because the judges in most states are elected, of course, by the people.

MR. FARLEY: Doesn't that extend to the power to appoint prosecutors and other key positions?

MR. BEBOUT: That is right.

MR. FARLEY: Can you name me one or two states, Professor, that, in your judgment, have more power in the Executive Department than New Jersey?

MR. BEBOUT: Yes, I can. New York. I have already named Massachusetts. As far as state administration is concerned, year in and year out, I would say Ohio, Illinois, and Missouri under its new constitution.

MR. FARLEY: Let's take one of the states, New York. Does the governor of New York have any power of appointment as far as the judiciary is concerned?

MR. BEBOUT: Only to fill vacancies.

MR. FARLEY: The interim appointment until the next election. Does he have power to appoint prosecutors?

MR. BEBOUT: No.

MR. FARLEY: Does he have any constitutional investigatory power?

MR. BEBOUT: I believe not.

MR. FARLEY: It is merely legislative.

MR. BEBOUT: He has, however, a fairly generous investigatory power and, by law, the power to remove local officials, which we are not proposing.

MR. FARLEY: Does the Governor of the State of New Jersey have the same investigatory powers under legislation?

MR. BEBOUT: He does at the present, substantially. He has not always had it, and there is no guarantee he always will have it, because what the Legislature gives, the Legislature can take away.

MR. FARLEY: Can you tell me, other than the two-third veto, what power Governor Dewey has more than Governor Driscoll right now?

MR. BEBOUT: Right now, Governor Dewey can appoint the heads of practically all of the state departments. I am not up to date, frankly, on the reorganization of state administration.

MR. FARLEY: Doesn't the Governor have the power to appoint the heads of key positions in the State of New Jersey, such as the Alcoholic Beverage Commissioner?

MR. BEBOUT: You will recall, however, in New Jersey a good many of these key people have terms considerably longer than the Governor's—for instance, the Highway Commissioner. The power of a previous Governor, or a future Governor, to make an appointment is of no particular value to the incumbent Governor.

MR. FARLEY: Personally, Professor, I agree with you that the Governor should have the power to appoint his own department heads, but I am trying to show for the record, by comparison, what is lacking in the Executive Department in New Jersey in comparison with New York and other key states of the Union. So far you have pointed out the appointment of department heads and the two-third veto. Now, is there anything else in your judgment that New Jersey lacks?

MR. BEBOUT: I haven't rested this case on the powers of the governors of other states. I said at the outset that the powers of the governors of practically all of the states were, in my opinion, defective when you compare them with the kind of balanced government set up by the Constitution of the United States and with what practically all of the students of our American separation-of-power system have said was necessary if you are going to make that system work. Let me make this observation about the comparison between the position of Governor with the enhanced powers we have suggested and the position of the President of the United States. There is no conceivable grant of powers that you could give the Governor of this or any other state that would put him relatively in as strong a position as the President of the United States is in. There are several reasons for that, one of them being that one of the principal sources of the President's power, one which has a very important influence on a great many things not obviously related to it, is the President's complete control over foreign affairs. Related to that, of course, is his command of the Army and Navy, which is important in peace as well as in war. Neither of those powers is possessed by the Governor of the State nor can be possessed by the Governor of the State, so that even if you are nervous about the amount of power that the Constitution of the United States gives the President, that should not worry you about any of the recommendations that we have made for the State.

MRS. BARUS: May I break in just a moment? One obvious advantage that Governor Dewey has, isn't it, is that he can be re-elected indefinitely?

MR. BEBOUT: That is right. That is a very important thing.

MR. FARLEY: In other words, you feel that the right to succeed yourself, increased veto power, and the appointment of department heads are what New Jersey needs?

MR. BEBOUT: Yes. These are three of the most important things. Yes.

CHAIRMAN: Anything else, Senator?

MR. FARLEY: No, that is all. Thank you, Professor.

MR. BEBOUT: One comment, though, in the light of the fact that you, and I think Senator Young, have made a point of the

fact that the Governor of New Jersey appoints judges whereas the governors of most states do not appoint judges. I think that is an important point to clear up. The plan on the judiciary that we propose would carry out a recommendation which has been made by a number of people—to adopt a modification of the so-called Missouri plan by providing for a judicial council to recommend qualified persons to the Governor for appointment as judges. I will not discuss that, for we have already discussed it before the Judiciary Committee. I think it is a very important and hopeful modification of the present system of appointment by the Governor simply with the consent of the Senate. The consent of the Senate, of course, would be continued in this case anyway.

MR. FARLEY: You believe the Senate should have the power of confirmation of all appointments?

MR. BEBOUT: Personally, I don't think the Senate should confirm appointments to the Governor's official family. I think in other cases it should.

MR. FARLEY: You say "official family." You mean the Cabinet?

MR. BEBOUT: The Cabinet, yes.

MR. FARLEY: And his Cabinet should be constituted of administrative heads of departments?

MR. BEBOUT: Yes.

MR. FARLEY: Do you believe in placing a limitation in the Constitution as to the number who should constitute the Cabinet?

MR. BEBOUT: I believe a maximum of 20 principal departments is sound. That is pretty well established, I think, by students of public administration as just about the top number for efficient, overall direction.

MR. FARLEY: You have opened that question. I would like to press it a little bit. Do you think appointment of an Alcoholic Beverage Commissioner should not be confirmed by the Senate?

CHAIRMAN: The Alcoholic Beverage Control Commissioner is appointed by the Legislature in joint session.

MR. FARLEY: I am sorry. I meant to say the Highway Commissioner or Motor Vehicle Commissioner, who deal with the public day by day—who deal with thousands of people in the aggregate. Would you say they should not be confirmed by the Senate?

MR. BEBOUT: If the Highway Commissioner or Motor Vehicle Commissioner is the head of a principal department, I would say it should not be the Senate.

MR. FARLEY: That is all.

CHAIRMAN: Senator Young.

MR. YOUNG: Professor, you made the statement that you were in favor of the two-thirds vote to override a veto. Now, in the

State of New Jersey, that means that two counties can sustain a veto, is that correct?

MR. BEBOUT: Yes.

MR. YOUNG: That is ten per cent of the counties. Of course, that is not true in the Federal Government. There is not ten per cent of the states that could stop a veto after it is made, isn't that true?

MRS. BARUS: May I break in? Isn't it true that in Congress, in the Senate, a very small number of people can sustain or override a veto—I mean, the representatives of a very small number?

MR. YOUNG: I am talking about the number of states.

MRS. BARUS: I know.

MR. BEBOUT: Yes, that is true. My answer would have been somewhat along the line Mrs. Barus obviously had in mind, that under the present Constitution, approximately 16 per cent of the people elect enough Senators and control the action of that body on all matters by the majority vote. Now, we could get into an endless argument, of course, about the Senators and whether it is more or less objectionable for two of 21 counties to be able to sustain the Governor's veto than for Senators elected by 16 per cent of the people absolutely to prevent any legislation whatever, but I don't think we need to discuss that.

MR. YOUNG: You are questioning whether there should be a Senate or not?

MR. BEBOUT: I did not raise that.

MR. YOUNG: You were very emphatic. Do you know any state in the United States where they have a two-thirds vote necessary to override a veto, where ten per cent of the counties in that state can uphold a veto?

MR. BEBOUT: I am not sure. It wouldn't surprise me if that were true of California.

MR. YOUNG: That is the only one you know?

MR. BEBOUT: I don't even know of that. I haven't checked the figures.

MR. BARTON: Professor, in referring to the control of the State by the Senate through 16 per cent of the people, how does that operate in the Assembly?

MR. BEBOUT: Well, in the Assembly, of course, the representation is approximately according to population. To be sure, the small counties have a slightly greater weight. I mean that the people of the smaller counties have a slightly greater weight per person. Of course, it is not enough to matter.

MR. BARTON: In the Assembly?

MR. BEBOUT: Yes.

MR. BARTON: They would be glad to hear that.

CHAIRMAN: Would anybody else in the Committee like to ask Professor Bebout a question?

MR. BEBOUT: I would like to finish what I was about to say about this matter of appointment of judges, because we think it bears on this thing. The proposals of our committee, in my opinion, reduce the patronage element in the Governor's power to appoint judges in a number of ways. I have already mentioned one way. Another way is in the fact they would reduce the number of judicial appointments that the Governor would be making during any term. That would be done in two ways: first, because we propose that the term of a judge, after he has served for a trial period, shall be at least 12 years, whereas now the terms of judges are five, six and seven years, and that means they expire more frequently. The other reason is the fact that our plan would eliminate all part-time judges, thus reducing the total number of judges and, therefore, the total number of judicial appointments that would come around year by year.

I would like to move on from that to this general observation concerning the importance of the appointing power from a political point of view. It is a point which, I think, has largely been overlooked in the discussions this year and previous years, and that is that its importance from a political point of view depends not so much on the importance or power of particular appointees as upon the number and variety of positions filled by appointment. Under the present Constitution and laws of the State, despite the fact that, in various ways, the power of the Governor to make appointments which would tend to enable him to require responsible administration of state affairs has been seriously curtailed, the Governor has a great number of individual appointments to positions, many of them part-time, many of them positions which, in my opinion, ought not to be subject to political appointment at all but ought to be filled through some Civil Service process. It would be perfectly possible—in fact, it ought to happen under a Constitution drawn up according to the specifications that we propose—very substantially to reduce the present patronage power of the Governor. The Legislature, at any rate, would have it entirely within its power to do that. If the Legislature is so afraid of the patronage power of the Governor, it has a remedy at hand under the Constitution that we propose.

I hope that this and other considerations of like nature will get permanently into the discussions of these Committees and of the Convention. The last time, I think there was a tendency for people, even the people who drew up the 1944 Constitution, to get lost in the woods, to concentrate on specific details without reference to their relation to the document as a whole. It is important

to remember that we are trying to draw up a Constitution which is a document, not a collection of details or gadgets, and each part has to be interpreted in the light of the whole set-up.

MRS. BARUS: May I raise a point? Would you say that this change in the appointment of judges and these minor officials would be an example of what, I think, Governor Driscoll said—of the Governor having too little power in big things and too much power in little things? It seems to me there is a very great difference between the appointment of judges, which belongs to an entirely different branch from the Executive, and the appointment of executive heads who clearly come under the responsibility of the administrative end of government. Do you consider that a correct point of view?

MR. BEBOUT: I do.

CHAIRMAN: Professor Bebout, I don't know whether you were trying to bait this Committee, particularly the legislative members, in your recent statement. I will not accept your challenge personally, because you have opened a field of debate which might go on for days. At least as far as I am concerned, I could not possibly disagree with you more on some of the statements you recently made. Does anybody want to take the matter further?

MR. YOUNG: When you say "by the elimination of part-time judges," do you mean the county judges?

MR. BEBOUT: Yes.

MR. YOUNG: You mean by that, you would have various judges coming from various other counties?

MR. BEBOUT: Yes.

CHAIRMAN: If there are no other questions, thank you very much, Professor Bebout.

MR. BEBOUT: Thank you.

CHAIRMAN: We are very much obliged. . . . There is nobody else from your group, is there John, who wants to speak?

MR. BEBOUT: Not so far as I know, but I am not sure.

CHAIRMAN: Ladies of the League of Women Voters, and also others that might have come in some time ago: Mr. Tom Parsonnet, counsel for the State Federation of Labor, has come in and has asked as a special privilege if he may speak now for a brief moment because he has an appointment in Newark. I have assumed that you would give your indulgence and allow him to speak now before we adjourn for lunch.

Mr. Parsonnet. . . . I promised, Tom, that you would speak less than three hours.

(Laughter)

MR. THOMAS L. PARSONNET: I will guarantee that. Mr. Chairman, ladies and gentlemen of the Committee:

The State Federation of Labor has prepared a statement which has already been mailed to each delegate to the Convention, and probably it is at your homes now. However, since it covers the entire field that we are interested in, I think if I were to read the introductory statement and then go to the Executive Section, I could save a great deal of time. (*Reading*):

"The New Jersey State Federation of Labor, an organization representing several hundred thousand workers in our State, wishes to express its hope that your deliberations will produce a document for the government of our State that will provide efficient government, economical government, but, above all, one that will provide democratic government with a full and complete recognition and assurance to our citizens of their civil, economic and social liberties and rights.

Too long have we in New Jersey favored the Hamiltonian theories of the superiority of the few, as against the Jeffersonian theories of the dignity and intelligence of all men. Too long have we suffered under the oligarchic form of government provided by the 1844 Constitution, in which we are permitted but the voice 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 conceive, 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, as the essential factor of any new Constitution, to act, without permission of the Legislature, to assert their will, and to effectuate their will. The 103 years' delay in securing proper modification of our old Constitution results simply from constitutional disability of the people to institute reforms at their initiative. This mistake should not be repeated."

May I say at this point that I heard Professor Bebout say that he is not strongly urging the initiative and referendum. That, I think, is the principal point proposed by the State Federation of Labor as the basic essential for democracy in our government. (*Reading*):

"We submit herewith for your consideration our proposals for changes or revision of the present State Constitution. In most cases we have not presumed to propose the exact wording to be included in the revision, feeling that the delegates to the Convention would prefer to develop the phraseology to conform with the general pattern of the document as a whole.

It should be noted that our specific recommendations are by no means exclusive, and that we would support modifications other than those presented herewith. Those which we submit herewith are the portions which, from our point of view, seem of the greatest importance.

You are probably acquainted with the fact that the State Federation of Labor has favored and supported for many years the proposal to revise our State Constitution. Our suggestions are, therefore, the result of much discussion, careful analysis, and deep interest in the matter. We trust that you will be able to give them your serious and favorable attention."

On page 8 of our memorandum appear our recommendations concerning the Executive. As to the term of office of the Governor (*reading*):

"We believe that the Governor should have a four-year term, with no limitation on the right to succeed himself in office.

A short term in office effectively prevents a Governor from carrying out the reforms on the basis of which he was elected to office. The prohibi-

tion against self-succession weakens or destroys the power of the Governor in the latter portion of his term of office.

We submit that the prohibition of self-succession is a reflection upon the intelligence of the electorate, a continuance of the aristocratic, oligarchic theories of Hamilton which, while theoretically declaring that 'all power is vested in the people,' practically deprives the people of exercising this power.

We have greater faith than this in the intelligence of the electorate. If a Governor performs his services capably and well, he should be retained in office. If not, he will be removed by the vote of the people."

As to appointment to office (*reading*):

"We suggest that all appointments to state office should be made by the Governor, with the advice and consent of the Senate. The practice of election of some state officials by a joint session of the Legislature has proven to be undesirable, since, in many cases, it has produced the election of persons not properly fitted for the office."

In connection with the Governor's Cabinet (*reading*):

"We believe that the Governor should be enabled to appoint his own designees to the high state offices which are policy-making in nature. [We don't necessarily mean all 20 departments but those offices which are policy-making.] We, therefore, recommend that all policy-making positions should be made coterminous with the term of the Governor."

On the veto power (*reading*):

"The Governor's veto power should be effective. We, therefore, suggest that a two-thirds vote of each House of the Legislature should be required to override a veto."

Now, in another section of our statement, we refer to the question of the appointment or election of judges. We favor the election of judges. We favor the removal of that power from the Governor because we believe those states which have had the election of judges have had a very superior judiciary. I think the State of New York is recognized as having the finest judiciary in the country, and it is a good example of election of judges to office.

I think that concludes our point on the Executive. Our principal points in our statement really refer to the Bill of Rights, to the Legislative Article and to the amendment process, but these four recommendations we have made with respect to the Executive.

CHAIRMAN: Any questions any member of the Committee would like to ask?

MR. MILLER: May I ask, Mr. Parsonnet, whether you as a legislative representative of the State Federation of Labor, and the State Federation of Labor as an organization, believe that the Governor should have the power of investigation as one of his inherent powers and that that should be written into the Constitution?

MR. PARSONNET: We think that would be a good idea. It was not one of the major points that we thought would be wise to include in this proposal of ours. We are, however, a member of the Committee on Constitutional Revision and support the recommendation of the committee on that subject matter. I under-

stand that there was a representative of the committee here today who took issue with what we understood the committee has gone on record in favor of in respect to the Governor's succession. We don't support his personal comments on that subject.

MR. MILLER: He is referring to Dr. Erdman's comments on the right to succession.

CHAIRMAN: You mean our Executive Committee?

MR. MILLER: No, the New Jersey Committee on Constitutional Revision.

CHAIRMAN: Excuse me.

MR. MILLER: The second question I would like to ask you, Mr. Parsonnet, is whether you agree with the general position that all constitutional offices as set forth, or perhaps limited only to a State Auditor, should be eliminated from the Constitution and they should be appointed by the Governor for concurrent terms?

MR. PARSONNET: Yes, and we do not believe that even the State Auditor should be otherwise than appointed by the Governor with the approval of the Senate. We believe that the laws and restrictions imposed upon even the State Auditor by law would be sufficient to secure proper state audits.

MR. MILLER: A third question and a last question. Is it your feeling that in the matter of the election of the members of the judiciary, you could so control, if you will, what might be described as a patronage function on the part of the Governor, that in augmenting other than his present powers, you would strengthen his office without at the same time increasing his power out of all proportion to the Legislative and Judicial Branches of State Government?

MR. PARSONNET: The way we feel about the power of the Governor—that is a very broad word and it has to be defined before we could make a specific statement—but we do feel that he is now in the position of a lackey rather than an executive and that he should be given executive position and authority. We do not believe that he should appoint the judiciary, but we believe that with respect to all executive offices and administrative offices, he is the individual responsible and should have the power of appointment.

MR. MILLER: Thank you very much, Mr. Parsonnet.

MR. SMITH: You made a reference to the initiative and referendum. May I ask this question, whether your organization believes in the republican form of government as against a democracy?

MR. PARSONNET: We think that at least some element of democracy is required. It is true that with the very large country we have, it is necessary to have a republican type, but we believe that the dignity of the people should be recognized sufficiently so

that they can, if they wish, impose their will upon the government rather than a government constantly imposing its will on the people.

MR. SMITH: My quarrel with that is that we have been organized as a republican form of government. I have never seen a hybrid thing work very satisfactorily, and if we are going to be a republican form of government, it seems to me we have to be true all along the line; and if we are going to be a democratic form of government, let's be a democratic form, but let's be one thing or the other. If we are going to be a republican form, or if that is the form of government we are supposed to have, then let's function as a republican form of government, and then the public should accept their responsibilities to the republic. If they do, a democracy will function.

MR. PARSONNET: A democracy can't function if you don't give the people the right to express themselves. It is all very well to say that this is a republican or democratic form. Those are just words. We are trying to reach a policy and never mind the words we use. We can use words to define what we wish. The thing we want is a system of government which will enhance the power of the people to insist upon how they will be controlled. Now, the only way that you can do that is to give the people the right of self-expression. The mere statement in the Constitution that all power is vested in the people is utterly meaningless unless you give it some expression.

MR. SMITH: I will agree with everything you said. I come back to my original contention, naturally, that if the people will accept their responsibility of citizenship as they should, then you can forget about words, but the effect will be just what you say.

CHAIRMAN: Any other questions by the Committee?

MR. FARLEY: If I am to analyze your remarks, are you driving at the basic theory that on important issues there should be a referendum by local option as to the attitude of the people?

MR. PARSONNET: Not by local option, Senator. I would say that the people should have the right on their own initiative, by petition signed by a very substantial number of people. For example, we recommend ten per cent of the electorate, which would require a 200,000-signature petition, to propose for a referendum on a state-wide basis amendments to the State Constitution, or a five per cent petition to propose the enactment of legislative acts to be voted upon by the people as a whole through referendum, not by local option on a state-wide basis.

MR. FARLEY: Do you feel that the present law in New York and New Jersey giving the Governor investigatory powers is insufficient?

MR. PARSONNET: No. I think, however, that it would be

best to put it in the Constitution so that it would not be emasculated.

MR. FARLEY: Is it in other constitutions that you do know?

MR. PARSONNET: Not to my knowledge, sir.

MR. FARLEY: Thank you, Mr. Parsonnet.

CHAIRMAN: One question, please, Tom. Has the Federation taken any position, or discussed it, on the matter of a Lieutenant-Governor?

MR. PARSONNET: We discussed it during the 1944 period. We supported the principle of appointing a Lieutenant-Governor.

CHAIRMAN: Appointing?

MR. PARSONNET: Electing. I beg your pardon. We supported the principle of the election of a Lieutenant-Governor. We supported it on the theory that only in that way could you expect to carry out the policies for which the Governor was elected if the Governor for some reason goes out of office during the year. We have not taken any position in opposition to that at this time, but we have not considered it was of sufficient significance from our point of view to include in our recommendation. I presume that we would still support the same position, because we have not changed; but we haven't presented it.

CHAIRMAN: If there are no other questions, thank you very much. We appreciate your coming.

MR. PARSONNET: I appreciate the opportunity of being heard.

MR. MILLER: Before we adjourn, may I say, for the purpose of the record and primarily for the members of the Committee, that Miss Evelyn Dubrow, the executive assistant to the president of the Congress of Industrial Organizations, called me this morning and asked me to convey to you, sir, and to the members of the Committee her regret that no representative of the C.I.O. will be able to be present today to participate in this discussion at this open hearing? But they reserve the right and would like to have the privilege of appearing on Tuesday of next week.

CHAIRMAN: It is all right. They know we are going to start at 11 o'clock, do they?

Now I would like to address the ladies of the League of Women Voters, who have been very patient. We hope you can all stay. I think it would be a good idea to adjourn now until two o'clock. We hope you will all be able to stay and you will certainly come on first at two o'clock; but if there are some of you who cannot stay and would like to say a word to us, we can certainly wait until one o'clock; or if you would like to leave and make a record of the fact that you have been here, we would make note of that.

MRS. CHARLES KELLERS: We are only going to have one

speaker. I would just like to read the list of the representatives of the local leagues who are here, since some of them may not be able to stay.

CHAIRMAN: Will you take the throne of honor, please?

MRS. KELLERS: I am representing the League of Women Voters of New Jersey, which is made up of 44 local leagues. We have some representatives from the local leagues: Mrs. Huson, of East Morris; Mrs. Richardson, of East Morris; Mrs. Boggs, of Montclair; Mrs. Reynolds, of Montclair; Mrs. Fowler, of East Morris; Mrs. Eyster, of Parsippany-Troy Hills; Mrs. Baldwin, of Summit; Mrs. Tetters, of Summit; Mrs. Lanigan, of Summit; Mrs. Howard, of Fair Lawn; Mrs. Bishop, of Fair Lawn.

Would the Committee prefer I wait until after lunch to present the League's point of view, so that you would have time to ask questions?

CHAIRMAN: Go ahead.

MRS. KELLERS: The proposals of the League of Women Voters of New Jersey have been arrived at by a pooling of the study and thinking of the members of the 44 leagues and counties.¹ We do not present them as the work of experts, but as the compilation of the studies made by many groups and individuals, with a bit of experience thrown in. The arguments for a good many of our proposals have already been given to your Committee by the speakers you have been hearing the past several days. Our explanations and arguments were outlined in our proposals sent to the Convention delegates, so we will, therefore, not repeat them. This is the thing that you all have, I believe, in your hands.² It would seem to me, from hearing some of the discussions, that it is up to this Committee to reach a nice balance between sufficient power for the Governor to do a good job and not giving him too much power.

The League of Women Voters of New Jersey has long been interested in the revision of the State Constitution. It has been aware of the difficulties encountered by one Governor after another, Governors of different parties and political beliefs, because of the lack of real executive powers given them by the Constitution. You now have an opportunity to correct this lack and we urge you to consider the following points in writing a new Constitution:

The term of the Governor shall be four years beginning in an odd-numbered year. There have been several speakers who have mentioned the fact of holding the election in a year that does not interfere with national elections, and also the fact that we have the unique three-year term.

¹ The Proposals appear in the Appendix to these Committee Proceedings.

² The reference is to a mimeographed statement on which Mrs. Kellers expands in the next and succeeding paragraphs.

We believe that the Governor should be able to succeed himself for at least one additional term. Succession to the office of Governor in case of his death, disability or absence, shall be by other than the present method. We do not believe that the present method is a good one—having the President of the Senate, who may be elected by a very small majority of the people, take over the job of the Governor. Either a Lieutenant-Governor or a specified member of the Governor's Cabinet is recommended.

The Governor shall have the right to appoint and remove all heads of administrative departments and may require information from them at any time. Confirmation or rejection by the Senate of appointments shall be made within a reasonable length of time.

The overriding of the Governor's veto shall require more than the simple majority necessary to pass the original bill. We suggested a two-thirds vote. We also suggest that a longer time be given for the Governor's consideration of passed bills, and our suggestion is ten days. The "Model State Constitution" gives 15; the present period is only five days. We suggest 10 days, with possibly 30 to 45 days at the end of the session.

The Governor shall have the right of investigation, with proper safeguards, into the state and local agencies of government in order to execute constitutional and legislative provisions. There has been some discussion of that before. I think what we meant by proper safeguards is public hearings or court action.

The Governor shall have the sole power of pardon.

There shall be not more than 20 principal departments of the State Government. The initial establishment shall be made by the Governor, with the consent of the Legislature, and subsequent ones by the Legislature subject to the Governor's veto. We also suggest that the department heads be appointed by the Governor but that the other administrative heads be under civil service. We also suggest that the Constitutional Convention might consider the question of an administrative assistant, a proposal that has been mentioned before.

Single heads of departments are recommended, but where boards are established, the members shall be appointed by the Governor with overlapping terms. The boards would be advisory the way the State Board of Education is.

There are further explanations of this in this compilation of League proposals which has been presented to you. If there is anything more you would like to ask now, or if you would like me to come back after lunch, I would be glad to.

CHAIRMAN: Any questions?

MR. BARTON: I have heard reference several times to the "Model State Constitution." I am wondering what the interpreta-

tion of the word "model" is? Is it a form that has been set up, or is it model in the sense of the essence of perfection?

MRS. KELLERS: It is a form set up by the National Municipal League.

MR. BARTON: It is a form, a pattern to go by?

MRS. KELLERS: A pattern. Would you say that, Professor Bebout?

MR. BEBOUT: It is a complete draft of a constitution which has been prepared and revised from time to time by our Committee on State Government, which consists of leading authorities in the country. It is not offered with the idea that it would be adaptable or satisfactory to any particular state. It is rather offered as a kind of pace-setter, and it has been so used in a good many constitutional conventions.

MR. FARLEY: Professor Bebout, is there any state in these United States that has adopted that model constitution?

MR. BEBOUT (*coming forward*): The question just asked was whether any state had adopted the so-called "Model State Constitution." I think that before I answer that question, I better get on the record what apparently did not get on the record before when I was talking from the back of the room, *i.e.*, that the "Model State Constitution" is a document prepared and revised from time to time, the last time last year by the Committee on State Government of the National Municipal League. The Committee on State Government is composed of two or three dozen of the leading authorities on state government and administration from all over the country. The chairman of it is W. Brooke Graves, who wrote the standard textbook which Professor Rich quoted from earlier this morning. The constitution has not, of course, been adopted by any state, and it was not intended to be adopted by any state *in toto* because no model made as that was made could possibly fit precisely the needs of any particular state. It was intended rather, as I said, to set a standard at which it is hoped the revisors of particular state constitutions would aim.

MR. FARLEY: Thank you, Professor.

CHAIRMAN: Any other questions?

MR. MILLER: May I ask you, in behalf of the League of Women Voters, whether it is the considered opinion on the part of the members of the League of Women Voters that having an unlimited succession on the part of the Governor or, as you suggest, having at least two terms, would so seriously throw out of balance the power of the Governor as to require some important limitations of other power to balance up for that power or right of succession?

MRS. KELLERS: I believe the League of Women Voters think

it is the right of the people to elect the Governor for as many terms as they wish to, and in considering this part of the Constitution, they considered it in the light of changing the whole Constitution.

MR. MILLER: May I ask a second question which bears indirectly on this—whether or not, in considering the Governor's appointive power in connection with the judiciary, the League has given consideration to the so-called Missouri plan of providing a judicial council that might recommend the names of members for the judiciary to the Governor, which would in a sense limit what has been described this morning as one of the patronage functions on the part of the Governor?

MRS. KELLERS: They have considered that. It is part of our plan under the judiciary. I am not as familiar with the judiciary.

MR. MILLER: And then, finally, Mr. Chairman, if I may ask this other question, is it the considered judgment of the League that the constitutional offices of government—I am thinking in particular of the Principal Keeper who was written in as a constitutional officer in 1844—whether the constitutional offices of government should be completely eliminated or drastically reduced in number?

MRS. KELLERS: It believes that they should certainly be drastically reduced. There is some question—

MR. BARTON: In reference to the judicial council matter which has been brought up several times—and your League has considered the advisability of a council to assist the Governor in judicial selections—has it considered a council of business men or prominent men in affairs of the State to help the Governor select heads of departments?

MRS. KELLERS: I don't believe so.

MR. BARTON: Thank you.

CHAIRMAN: Anybody else?

MR. SMITH: I move, Mr. Chairman, a vote of thanks be given the representatives of the League of Women Voters.

MR. FARLEY: I second the motion.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: So ordered. Thank you very much indeed.

MR. MILLER: In view of the fact that the representatives of the other organizations are still here, may I suggest that they also be included in the vote of thanks.

MR. BARTON: I second it.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: So ordered. Just before we adjourn for lunch,

are there any organizations or individuals who have not been heard and who would like to be heard? If so, will they please stand up.

MRS. BARUS: I have a suggestion from Senator Farley that the names of the people here be written into the record—the other League members.

CHAIRMAN: Will you please give them to the Secretary?

MR. MILLER: May I suggest that you, perhaps, as Chairman of this Committee, through the press, give some publicity to the fact that a public hearing will be given on Tuesday morning next at 11 o'clock. I discovered that several organizations and individuals were unaware of the fact that we were to have a public hearing today. I think an announcement by you would be carried by the press. Undoubtedly, there may be other organizations that would like to be heard and did not know we were to hold a public hearing today.

CHAIRMAN: I will give it to the press at my regular meeting at four o'clock. I think it would be wise if we come back here at two o'clock to see if there is anybody who wants to be heard. If not, we will go upstairs and go to work again. The meeting is adjourned for lunch. Thank you very much.

(The session adjourned at 1:15 P.M. The Committee returned at 2:00 P. M., and there being no others to be heard, the members adjourned to the Committee's private room for an executive session.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Thursday, June 26, 1947

(Executive session)

(Minutes)

A business session of the Committee on the Executive, Militia and Civil Officers was held at 2:15 P. M., Thursday, June 26, 1947. Members present were: Chairman Van Alstyne, presiding; Barton, Barus, Eggers, Farley, Feller, Miller, S., Jr., Smith, J. S., Walton and Young.

Commissioner Smith moved to approve Article IV, Section II, in the draft of the proposed Constitution of 1944, in place of the present [Article V], paragraphs 9 and 10 on pardons and parole. The motion was seconded.

Discussion:

Barus: The intent of the Section is to put the parole decisions in the hands of technical experts.

Miller: New York State has the best parole system.

Farley: In effect, this system is now in operation; this comment based on his experience as Acting Governor.

Mr. William Miller called attention to the fact that this Section omits the power to commute sentences.

The motion was passed, with the direction to Mr. William Miller to include commutation, and to clarify the wording in line 3, "or person administering the government."

The Chairman suggested that it might be well to consult Commissioner Sanford Bates on this Section. Motion withdrawn.

Farley moved that the Committee invite Commissioner Bates to appear before it. Motion seconded and carried. Commissioner Miller was requested to ask him to come on Wednesday, July 2.

Miller moved that Article VI, Section IV, paragraph 1 of the 1944 draft be approved, providing that the Judiciary Committee includes a provision for the impeachment of judges. Motion seconded.

Eggers moved to amend by adding the words "in and during" before the word "office," in order to make it clear that impeachment could be established for any misdemeanor during the entire term. Amendment seconded.

After discussion, the matter was referred to Mr. William Miller

to clarify the wording to cover this intention. Motion carried as amended.

Discussion of the succession to office in the event of the disability of the Governor, and the functions of the Lieutenant-Governor and of the proposed Administrative Assistant.

Feller moved for a Lieutenant-Governor, elected by the people, but not to preside over the Senate. Motion seconded.

Farley opposed the motion; he prefers present method.

Feller: 36 states now have lieutenant-governors. New Jersey is the most populous of the remaining 12.

Miller: Read section on the lieutenant-governor from the New York Constitution. In New York the lieutenant-governor has succeeded six times, so one seems to be needed.

Smith: Opposed to lieutenant-governor; feels people would disregard him in voting, and he would be picked for political reasons only.

Eggers: Cannot see that the lieutenant-governor would have any useful function.

Motion lost, 6 to 3.

Feller moved that we adopt the present system. Motion seconded.

Walton moved to amend to provide for a third succession, to be determined by the Legislature in the event of the death or disability of both the President of the Senate and the Speaker of the House. Amendment seconded. Motion carried.

Farley made the point that the succession should go to the office and not to the man. He moved that Art. IV, Section I, paragraph 8 of the 1944 proposed Constitution be approved, with one change to provide that a special election for Governor should be held on the second Tuesday of the next November. Motion seconded and carried.

Farley moved that vacancies in county elective offices be filled in a manner to be provided by law. Motion seconded and carried.

There was a discussion of the necessity for preventing failure of the Governor to make appointments.

Walton moved that Mr. William Miller be requested to work out a provision: (1) to prevent a succession of *ad interim* appointments; (2) to put a limit on the time allowed for making permanent appointments. Seconded and carried.

Farley moved to approve Art. IV, Section I, paragraph 7 of the 1944 draft on the succession in case of impeachment, with the addition of the words "for the time being" after the words "President of the Senate." Motion seconded and carried.

Miller moved that the present paragraph 14 [of Article V] on succession to the Governor-elect be incorporated and referred to Mr. William Miller for wording. Motion seconded and carried.

Miller suggested study of the Minnesota statute on Executive Assistant. The suggestion was informally accepted.

The minutes of the June 24 meeting were approved.

Farley moved that the Committee be available to work late both Tuesday, July 1, and Wednesday, July 2. Seconded and carried. Meeting adjourned.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 1, 1947

(Morning session)

(Executive session)

(Minutes)

A meeting of the Committee was held in Room 109 of the Rutgers Gymnasium at 10:00 A. M., Tuesday, July 1, 1947.

Members present were: Chairman Van Alstyne, presiding, Barus, Farley, Feller, Hansen, Miller, S. Jr., Smith, J. S., Walton and Young.

The minutes of the meeting of the Committee on June 26 were approved upon motion duly made, seconded and carried. The Committee also gave informal approval to the Secretary's method of recording names of members without repetition of their titles.

Walton moved that the Committee adopt the policy of having verbatim minutes kept of each meeting. Seconded. Discussion brought out the point that newspaper representatives attended the meetings, and that if the press reported the proceedings inaccurately the Committee would have no record of its own to produce without such stenographic minutes. Motion carried by a vote of 4 to 3.

The Committee moved into the main Convention Hall at 11:00 A.M. for a public hearing.¹

* * *

Respectfully submitted,

JANE E. BARUS, *Secretary*

¹ The minutes here summarize the proceedings, the record of which follows these minutes.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 1, 1947

(Morning session)

(The session began at 11 A.M.)

PRESENT: Barus, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: I would appreciate it if all those who wish to speak at this public hearing would come up now and register with the Secretary.

The meeting will please come to order. This is a public hearing of the Executive Committee to discuss the Executive, Civil Officers, and Militia Sections of the Constitution. The first person appearing before us is Mr. Tierney, who represents the farmers of the State. Mr. Tierney, you have the floor.

MR. GEORGE TIERNEY: Members of the Committee: I am here on behalf of the New Jersey Grange, the New Jersey Farm Bureau, the United Milk Producers of New Jersey, the New Jersey State Poultry Association, the New Jersey State Potato Association, the New Jersey State Agricultural Society, and the New Jersey State Horticultural Society.

As we all know, this Convention has been called to rewrite a Constitution that has been in effect since 1844. That Constitution was written mostly by farmers because we were then an agricultural state. Today I am here representing the farmers of the State to make a plea that they be left to operate as they presently are. They have been successful in their operation, and in order to show you the method I would like to trace their history from the time of the original Constitution.

In 1855 there was formed the New Jersey Agricultural Society. Several men who were in that Society rose to prominence; two Governors of the State of New Jersey were members of the Society. In order to promote the best interests of agriculture, the Society used to run a fair every year. It invested large sums of money, and finally ended up owning what is now known as Weequahic Park in Newark, where the annual fairs used to be run, and through these fairs agricultural knowledge was disseminated to various agricultural groups throughout the State. Weequahic Park was

sold to the County of Essex in 1899, and the New Jersey Agricultural Society became dormant. However, it is still a very potent factor in agriculture in the State and has a large membership comprised of farmers.

In 1872, the Legislature first provided for a State Board of Agriculture. That Board was elected by farmers throughout the State, and they ran it until 1916, until the body was so large that it became unwieldy. The farmers then went to the Legislature with a plan for running the Department of Agriculture; that is your present plan whereby a convention is held in Trenton each year, made up of some 90 delegates representative of various agricultural interests throughout the State. These men in convention name two candidates for the State Board of Agriculture. The State Board presently consists of eight members. The two candidates or nominees of the convention, prior to 1940, automatically became members of the State Board of Agriculture, which Board in turn had the right to appoint the Secretary of Agriculture. In 1944, the law was again changed. At the present time the convention elects the nominees for the membership on the State Board of Agriculture. These names are presented to the Governor, who appoints with the consent of the Senate. The same procedure follows for the Secretary of Agriculture. The State Board recommends the name to the Governor, and the Senate confirms. So far no Governor has seen fit to reject the names of any of the members submitted by the convention. I am here to ask that this method be continued and that a provision be written into the Constitution to insure its continuance.

New Jersey may not seem to be an agricultural state, but in 1916 the value of its farm products totalled \$60,000,000. This past year they were up to \$265,000,000. The State is the first among the 48 states in the amount of wheat, corn and some other vegetables grown. We supply, right here in Sussex County, 70 per cent of the milk that is consumed in New Jersey. By the way, there are more cows than persons in Sussex County. All that is for the benefit of all the people of the State of New Jersey. When we can supply 70 per cent of the milk and guarantee fresh delivery of that milk in 12 to 14 hours, instead of having to import milk from Wisconsin and other states, I think that is for the good of the whole State and not alone for the good of the farmers individually.

I might state that during all the years that the Department of Agriculture has been run by the farmers themselves, the Legislature has probably had less trouble with that group than with any other group with which it was confronted. All the laws pertaining to agriculture are contained in 55 small pages; it is the smallest compilation of laws pertaining to any large industry in the State.

Agriculture with its various ramifications constitutes the largest industry in the State; that includes food packing and all the other activities necessary to deliver more than \$600,000,000 worth of farm products. It is a large industry.

As far as the state contribution to agriculture is concerned, I believe that the State spends less money on agriculture than any other state in the Union. The farmers in this State have never asked for money, for instance, to distribute their food. In the City of Newark the farmers themselves have invested more than half a million dollars in a public market. This past year the State of Connecticut appropriated \$1,500,000 to build a market for the farmers. The City of New York owns all the farmers' markets in New York City, paid for by the taxpayers' money. In Passaic and Bergen Counties, the farmers have invested a quarter-million dollars in their own markets. Throughout the entire State these markets have been financed by the farmers without aid from the taxpayers. Some people say that the farmers pay little taxes. We are in competition with nearby states on all our produce, and our taxes are four times the amount farmers have to pay in neighboring states. At the present time we are the only State in which the number of farms has not decreased. There are 25,000 farms in New Jersey comprising more than 1,600,000 acres of ground. I don't know what would happen up in Sussex County if all the cows were taken away, but I do know that Sussex County could not produce much else but milk.

We feel that we have been so successful that there is no need to make our department any different than it is. We don't want it in politics. If you were to ask me today—and I have been representing farmers for more than 20 years—I couldn't tell you the political complexion of the State Board of Agriculture. Nor do I think there is anyone in this room, and there are some farmers here, who know what their next door neighbor's politics are. They don't concern themselves about politics where the State Board of Agriculture is concerned. We are asking that in the provision relating to the setting up of the Board and department that you put a clause in the Constitution that members of the State Board of Agriculture shall be selected as heretofore provided by law. That is all we are asking.

I can well see political reasons which may impel some persons to object to this. There is one appointment that carries a \$10,000-a-year salary; it would be a nice piece of political patronage to hand out, but that, I believe, would not be for the good of the State. The man who has that job has to know agriculture, and he should be acceptable to the farmers of the State. I am sure that if the farmers ever recommended the wrong man, the Governor

and the Senate would turn him down. The other reason I say that it would be bad is that somebody would have to do this work. It requires high technical knowledge and skill, and I don't think it should be handed out merely to somebody who wants the title Secretary of Agriculture. I don't think it would do the people of the State any good to have such a position handed out politically.

To insure the present continuity of the Board would, I believe, make it very much easier to have this Constitution adopted by the people. It would be a lot easier for the various leaders in these farm areas to go out and sell the people the idea, the adoption of a new Constitution, if they know that the provisions of the present law are going to be preserved for them, so that this department is kept absolutely divorced from politics.

I'd like to present each member of the Committee with a brief signed by these various farm organizations that I represent and to request that you study the brief.¹ If there are any questions which any member of the Committee would like to ask, I would be pleased to try to answer them.

MRS. JANE E. BARUS: Mr. Chairman, I would like to make sure that this contains the complete list of organizations for which Mr. Tierney speaks. I wasn't able to get them all. I have the Grange, Farm Bureau, Milk Producers—what else?

MR. TIERNEY: Most of them are on the back (*indicating brief submitted*) signed by various officers. The only reason all the groups I represent are not on there is that it would have taken such a long time to obtain the signatures. In addition to this group I represent the Paterson Market; I represent the New Jersey Farm Supply; I'm connected with the Newark Market; I represent the Farmers Producers Dairy; I represent the Newark Egg Auction, and I have at times done work for the Flemington Egg Auction. We know that the National Manufacturers Association has been talking about these cooperative taxes. I might say that the Newark Farmers' Market pays income taxes. It pays taxes to the City of Newark on its property and it is not one of the so-called exempt farmers' cooperatives. Nor is the Paterson Market Growers' Cooperative Association, which last year paid the City of Paterson more than \$5,000 in taxes and the Federal Government over \$8,000 in income taxes.

CHAIRMAN: Would any member of the Committee like to ask Mr. Tierney a question?

MR. J. SPENCER SMITH: This is not a question, but it is for information and the record. If it is true, I was told one time that Sussex County produced more milk per acre than any other area in the world.

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

MR. TIERNEY: I might say the State of New Jersey produces more pounds of milk per cow per annum than any other place in the world. I might say that Sussex County has a prize herd of cattle that holds all records all over the world, and their cattle are shipped all over the world. I might also say that the hens in New Jersey lay more eggs per hen than any other hens in the world, and one egg is laid every day in the State of New Jersey for every inhabitant in the State. So you get fresh eggs. And I might say these farmers have invested their own money so you get these things on your table promptly. They have prepared these markets, they have invested money in these markets. At egg auctions, eggs must come in twice a week in order that your eggs are not too old when you get them on your table. State law provides that they must be labeled "Fresh Eggs."

MR. SMITH: Is it true that New Jersey ranks one, two, three, four, five, or six in everything in the way of money value in agricultural products, other than in range?

MR. TIERNEY: Yes, it does, and I might say that New Jersey also ranks first in the number of farms owned by the operators—that is, there are fewer tenant farmers in New Jersey than in any other State; that there is less money spent by the State of New Jersey on agriculture than in any other state in the Union; and that there were fewer foreclosures during the depression on farm property. There was less money spent by New Jersey per capita for relief in rural areas than in urban and city areas. The farmers did not cry for relief. During the depression and until last May I was the mayor of the town in which I live, Cedar Grove, in Essex County. We have quite a few vegetable farmers, dairy farmers and chicken farmers, and none of them ever applied for relief.

MR. SMITH: Mr. Tierney, have you the records as to the amount of money that the Federal Government handed back to the farmers in New Jersey compared with other states in the Union?

MR. TIERNEY: I am pleased to state that they didn't hand very much back, because the farmers in New Jersey wouldn't sign up for the program and wouldn't take the money. A large number took that position. I have seen them tear checks up that came from the Federal Government because they were afraid of getting tied in with federal control over their crops.

MR. SMITH: The reason I'm asking these questions is that I want to bring out the fact, which so few of our citizens in New Jersey recognize, that New Jersey is outstanding as an agricultural state among the states of the Union.

MR. TIERNEY: You folks all know it is called the "Garden State." I don't know whether you know why, but in a history of New Jersey written in 1877 it was stated that New Jersey was mid-

way between New York and Philadelphia and was ideally suited for agriculture; it became known as the "Garden State"—named for its agriculture.

MR. MILTON A. FELLER: I'd like to express an opinion on the matter of interpretation. Your recommendation was in effect that a provision be put in the Constitution that the State Board of Agriculture should be appointed as heretofore provided by law. There is a question in my mind as to whether it would be good constitutional language to have the word "heretofore" be in there, because I doubt whether it would appear in any other part of the Constitution. It seems to be tying up the new Constitution with the, let's say, inflexibilities of the past. Now, if the word "heretofore" were eliminated, would the same effect be realized?

MR. TIERNEY: No, I think there should appear "heretofore provided by law." When you speak of law, you mean any acts that may be passed by the Legislature.

MR. FELLER: Suppose we said the members of the State Board shall be appointed "as provided by law"?

MR. TIERNEY: That is all right, but I mean even that "heretofore provided by law." They have always been provided by some provision in the laws themselves, and I don't believe that that would effect any change in that particular law. But we do want these men appointed by the farmers. We don't want this thing thrown into the field of politics. There is no good reason why it should be.

MR. FELLER: Would you be willing to leave it up to the Legislature?

MR. TIERNEY: Yes. Here's the way we feel about it. We have had a Constitution since 1844; it is now coming up for revision. Maybe that is all to the good, maybe it isn't; but if it is adopted by the people, we do know that the Legislature is going to be elected at least every two, four, or six years, and if we feel any grievance we can take it up with the Legislature. We would like a specific provision that this particular item is not going to become subject to the whims of one man, so that he can hand out a job to some walking delegate with a big title and nothing to do.

Our Secretary of Agriculture today, and I know it as a fact, works on the average from 12 to 16 hours a day. No matter where he is called in the State, he is there; no matter what the problem that comes up, he is there. Now, I wouldn't want to see a man with a job like that who is going to send some subordinate out who doesn't know or isn't qualified to pass on it. These Secretaries have always been picked with care. Mr. Allen, the present Secretary, was in charge of the egg-laying contest, had charge of all agricultural agencies in the State, and he has a general knowledge of agriculture. He knows what the farmers need.

MRS. BARUS: I'd like to ask one question, Mr. Tierney. You have made a very good case for the fact that agriculture affects all citizens of the State. No one can possibly deny that there are other major branches of the government that affect the State in its essential welfare. Take, for example, the Department of Health. Following the plan that you produce, the doctors and nurses in organizations in the State should have the power to appoint the head of the Department of Health. Take the Department of Education, another absolutely essential function of the government that intimately affects all the citizens. All the teachers might argue, on the same basis as your argument, that they should be empowered to choose the Commissioner of Education. Would you feel that that would be to the best interests of the people of the State?

MR. TIERNEY: No, I wouldn't, the reason being that the people whom you suggest might appoint them wouldn't be tied to the State. The people that I'm representing, they are right down in the grass roots. Now, if the teacher isn't satisfied, she can leave. She can go to New York. A farmer can't pick up overnight and transport 200 cows somewhere else. He is tied here. He is part of the soil. The others who have been mentioned, such as doctors and nurses, are more or less free. They might own their own home, yes.

You also have another department here that we cooperate with—the State Board of Health. But when it comes to diseases of animals as compared to the diseases of human beings, that is a particular item in itself. These animals are dumb. They can't tell us how they feel. They get a disease and away they go, unless there are practical men to take care of them.

MR. SPENCER MILLER, JR.: Mr. Tierney, we are engaged in revising our 1844 Constitution and bringing it into correspondence with not only present needs but what we hope will be future requirements. Would you think it appropriate that the Department of Agriculture, for example, and the Secretary of Agriculture, should be treated differently from any other, or every other, departmental head, assuming for the moment that it seems to be regarded as sound administrative practice to have the Governor appoint all of the members of his Cabinet, or all the heads of the chief administrative departments? I'll repeat my question. Do you think it proper that an exception be made for agriculture in comparison with all other departments of the State Government?

MR. TIERNEY: That would depend on the functions of the other departments. If they were so closely related to the people that are engaged in the particular endeavor, and to all of the people of the State, I would say yes. I don't think that it is as has been suggested by Senator Barton, that they are special people. I

say, no. They are all the people. Everyone is vitally interested. Take Essex County; that is considered an industrial community. Yet, the farmers there produce some 60-odd types of fresh vegetables that are put on the market seven days a week.

I say that if you have a good administrator, it is all right; but to get a man who is particularly well qualified and has special knowledge makes for better administration. You have your dairy, your poultry, your vegetables, your berry growers, your blueberry crop—the largest crop in the United States is grown in New Jersey. Now, why? Because the Department of Agriculture saw to it, learned and went in there and made a study of the propagation of blueberries. The same is true of cranberries. Everything requires individual treatment. There are so many phases to agriculture that do not apply to other lines. I think it doesn't require any special treatment, but it requires a treatment that will keep it out of politics.

MR. MILLER: I'd like to ask you, Mr. Tierney, whether in your judgment it is possible to have an administrative officer appointed on the basis of his qualifications for the post, above the level of what you describe as politics. For example, we are all of us in this country committed to keeping education out of politics. Would you think it impossible to do that if the Commissioner of Education, for example, were appointed by the Governor? We think it is highly important that the Commissioner of Institutions and Agencies should be a man who is selected for his professional competence rather than because of any political considerations. Would you think that it was impossible to select men on a basis of gubernatorial appointment? May I just further say, I am wondering whether it isn't conceivably plausible that by executive appointment you can secure men who are free from any political consideration, provided you have a Chief Executive who is concerned with putting the administration of the State Government on a professional rather than on a political basis.

MR. TIERNEY: I heartily agree. All that can be done. But the danger that I foresee is that we may have a Governor some time in the future, and especially so if the term of office is unlimited, who may want to build up a large political following. All the things that you have said can be done, but it may some day lead to a situation that would be bad for all the people of the State. I would say, in this particular instance, that everybody has been happy with the situation. The farmers are not in the courts. There is no expense. You can't find one case under the agricultural laws, outside of the State Milk Control Board Act, which is not under the jurisdiction of the Department of Agriculture, where any of these departments have been to court, so that this depart-

ment has cost no money in the courts since 1872.

MR. MILLER: One final question, Mr. Chairman. Mr. Tierney, I think none of us would disagree with what you have said essentially: that not only do we depend upon the farming community to a very great extent for much of our food, but we regard the farming way of life as a very important part of our whole American system. However, the question which is presently before this Committee is: When we plan and design the structure of our Constitution for the days ahead, ought we to set up a series of exceptions to what has come to be recognized as sound practice? Or, are there ways in which we can bring into the framework of a new Constitution the essential spirit of your present set-up, still preserving to the Governor the right of appointment of the administrative head of the great Department of Agriculture?

MR. TIERNEY: I might say that under the present set-up the Governor has that right. We are not asking that it be taken away from him. We are not asking any exception to the present condition. We are merely asking that this condition be preserved. I might also state that the Constitution of the State of New York now has a provision similar to this, so that agriculture is kept out of politics. In several other states, New Jersey is cited as an example. I have been all over the country, at agricultural conventions, and almost every farm group envies New Jersey for its present set-up—that there are no political turmoils and upheavals every time there is a change in Governor.

MR. MILLER: Mr. Chairman, could we ask Mr. Tierney to supply subsequently, as documentation, a statement indicating what other states in the Union, in addition to our own State and, as he now suggests, New York State, have a plan similar to the one which he outlines.

MR. TIERNEY: I'll be glad to do it, and also to supply a brief on some of the difficulties that are present in other states.

CHAIRMAN: Does anybody else wish to ask any questions? If not, thank you very much for coming before us.

MR. MILLER: I move that a vote of thanks be given to Mr. Tierney.

(Motion seconded and carried unanimously)

CHAIRMAN: Mr. LeRoy, representing, I believe, the State, County and Municipal Workers. Are you going to talk on the Executive Section or Civil Officers?

MR. GIBSON LEROY: I have been asked to come here on the question of basic civil rights of the public employees.

CHAIRMAN: Does anybody else want to speak on the Executive Section?

MR. SOL D. KAPELSOHN: I do.

CHAIRMAN: What is your name?

MR. KAPELSOHN: Sol D. Kapelsohn, of the New Jersey C.I.O. Council. The position which the New Jersey State C.I.O. Council has taken on the Executive Article is in favor of a four-year term for the Governor with the provision that it be not restricted to less than two terms. The Council feels that that is short enough a period in which a competent Executive can perform his work and see it come to fruition. We cannot agree with those who have feared too much that a period in this office of at least eight years would result, or might result, in establishing any kind of a personal machine of such nature or stature as would interfere with our democratic process. So far as we have been able to observe, whatever there is to fear relates to a party machine rather than to a personal machine. In any event, if we don't have to worry too much about control by one party—that is to say, if we accept the two-party system as we have it now, or the party system as we have it now—there is certainly nothing besides that that we have to fear in respect to holding this office.

At the time that the present Constitution was adopted, it was, perhaps, felt that this office would be held as a matter rather of honor than anything else, by persons who were willing and able to take themselves out of their normal activities for a limited period of time. Experience in New Jersey, so far as we have been able to observe and so far as we understand it, has not indicated the wisdom of that in any respect. The period now provided for is altogether too short to enable any newcomer to this office to make his influence properly felt, to accomplish any sort of a job. These restrictions in respect to time have a discouraging effect from the outset, so that for the most part, as far as tendencies are concerned, there is likely to be too great a tendency to strengthen the machine or the particular small group through which the party has come into office.

We feel such a restriction of gubernatorial service, as we propose, or as we advocate, would go a great way toward eliminating that serious difficulty with this office. That is as much a statement as the C.I.O. cares to make, but if any of you gentlemen have any questions I'll be glad to answer them with respect to our position.

CHAIRMAN: Thank you, Mr. Kapelsohn.

MR. SMITH: Mr. Kapelsohn, would you mind enlarging on that last statement with regard—

CHAIRMAN: Commissioner Smith, would you mind speaking a little louder?

MR. SMITH: Would you mind elaborating on that question? You said, if I understood you correctly, that a single term would enable a machine to be built up, whereas it would seem just the

opposite if he had two terms and could build up a machine.

MR. KAPELSOHN: I don't believe that is what I said. Perhaps I did not express myself clearly, or perhaps I wasn't heard clearly. We feel that the present highly limited term for which a Governor is allowed to serve is a discouragement at the outset to his proper desire and effort to effect the reforms or conditions on the basis of which he is elected to office. Among other things, it leads too much, or tends too much, to an effort to strengthen the position of the particular political group or machine through which he has ascended to the office.

MR. SMITH: Wouldn't that be more so if he had two terms? Wouldn't he have a greater power to do that?

MR. KAPELSOHN: I don't quite see how. The point I make is that a longer term in office enables a man to plan and see come to fruition some measure of the program on which and for which he was elected to office. In the short period now allowed he obviously can't do anything of the kind, to any substantial extent.

MR. SMITH: Mr. Kapelsohn, do you know of any other state in the Union where the Governor has the power that he has in New Jersey? For instance, the Governor of New Jersey, during an eight-year term, would appoint every law enforcement officer in the State, including all of the judges, outside of possibly a police court judge. So, if you elect a Governor in New Jersey for two terms, he could absolutely control the State and build up a very powerful machine through the law enforcement officers, without taking into consideration any of the other powerful officers that he would have. That is the first question I would like to ask.

Question No. 2: Can you tell me any Governor of our State who has enunciated policies that required a four-year term or longer to carry them out? What I have in mind in asking that question is that I have served under all the Governors in New Jersey since Woodrow Wilson, and I have watched them closely when they have advocated policies. The Legislature has to pass on any legislative matters, and usually any policy that the Governor has resolves itself into a legislative matter.

Those are the two questions I'd like to ask. One, the power of the Governor: Do you know any other state in the Union where he possesses that power and can do that? And the other is: Do you know of any Governor who hasn't been able to carry out his policy irrespective of the requirements of the Legislature?

MR. KAPELSOHN: On the first question, I haven't made any such comparative study of the 48 systems of state governments under individual state constitutions. I do know that if the Governor's power in respect to appointments is so absolute that there is reason to fear what you seem to have in mind, that is to be handled

in respect to other provisions of this proposed Constitution. However, the Governor's power of appointment is not absolute. It is subject to approval in every case, or in the cases you mention, and that supplies a fair measure of restriction on the power that you suggest. Now, what was your other question, sir?

MR. SMITH: Do you know of any policies enunciated by any Governor that haven't been carried into effect by that Governor in three years of office, provided it didn't call for legislative approval? If it calls for action on the part of the Legislature, then irrespective of his term of office, it will depend on the elected officials of the Legislature.

MR. KAPELSOHN: I'm not prepared to answer that question. I don't doubt that examination of the record would show a campaign promise here or there which was not fulfilled in office.

MR. SMITH: Well, we will eliminate campaign promises. We will take major policies such as you suggest. The reason I'm pursuing these lines is because to me there is a great deal of theory about this question of succession of the Governor, as against practice that I have had to witness and go along with and be a part of.

MR. KAPELSOHN: Just what specifically do you have in mind, sir?

MR. SMITH: What you are saying about the Governor and his power to carry out his policies being dependent on the length of his term—I don't think that is quite so in practice.

MR. KAPELSOHN: Logically, it must necessarily, to some extent, depend on his length of term in office. If he were elected for a day, for example—to exaggerate in that fashion—he obviously could carry out substantially nothing. His ability to do so increases with the length of his term in office. However, there must be some restriction on that length of term in office. With that in mind we suggest a four-year term.

MR. SMITH: My point is: are you linking up what calls for legislative action, the power of a Legislature, with the power of the Governor in regard to policy? There is quite a difference, you know. The Governor may lay down a program of all sorts of things that call for action on the part of the Legislature, and the Legislature may refuse to enact any legislation. He might be in power 16 years and not carry out a single policy.

MR. KAPELSOHN: That is quite true, but a longer term of office would enable him to make his weight and the influence and the prestige of this position felt. Of course, any Governor's program—his outline of policy to be followed by his own office during his term—has legislative implications. You can't entirely disassociate, it seems to me, those things that you call policy from the efforts of the Governor in pursuance of his policy, or of having

appropriate legislation passed in an effort to carry it out. The two things are interwoven to a very substantial degree.

CHAIRMAN: Any further questions?

MR. FELLER: Mr. Kapelsohn, I believe you stated that your organization favored succession for at least eight years. Suppose there was a constitutional provision put in that the Governor could succeed himself once. Would that satisfy you?

MR. KAPELSOHN: That is what we had in mind, sir. When I was talking about eight years, I wasn't limiting that to the succession; I was considering the entire period in office, succession of not less than one more term. We feel that a Governor should have four years in office for his initial term, and that a Governor whose accomplishments have earned him and given to him sufficient public support for reelection, should be enabled to run again for at least one succeeding term.

MR. FELLER: What if he were restricted to that one succeeding term? Would you be satisfied?

MR. KAPELSOHN: We would not object to that provision.

MR. DAVID YOUNG, 3d: Would your ideas change at all depending on how much authority was given to the Governor?

MR. KAPELSOHN: I don't think so, sir.

MR. YOUNG: In other words, it has been recommended to this Committee that practically war-time powers, as have been given to the President, be given to the Governor of this State. That wouldn't change your opinion as to whether he should succeed himself or not?

MR. KAPELSOHN: That wouldn't change my opinion as to whether he should be empowered to succeed himself, but don't think that means that I personally, or the organization for which I speak today, endorses any such proposal. We see no need and we see no propriety in having the State Constitution give to a Governor any such powers as I take it you imply by your statement.

MR. YOUNG: Do you think he should appoint officers of the State, whether a Cabinet member or not?

MR. KAPELSOHN: You must bear in mind, sir, that I'm expressing here the position taken by an organization which I represent. It has passed no resolution on that question, and I don't think I would be justified in permitting its position to be misconstrued by a statement on that point at this time.

MR. YOUNG: Do you have any personal ideas on the matter?

MR. KAPELSOHN: None I've developed sufficiently that I'd care to express at the moment.

MR. FRANK S. FARLEY: I understand you are the spokesman for the C.I.O. Is that correct?

MR. KAPELSOHN: Yes, sir.

MR. FARLEY: Are you the only spokesman for the C.I.O.?

MR. KAPELSOHN: At the moment I'm the only spokesman at this hearing. The C.I.O., from time to time, at hearings of different kinds, before different bodies, authorizes or directs a particular person to speak for it.

MR. FARLEY: I'm not questioning your authority. I would like to know whether this is an overall representation of the C.I.O. throughout the entire State of New Jersey?

MR. KAPELSOHN: This is the position officially taken by resolution of the New Jersey State Council of the C.I.O.

MR. FARLEY: The Council consists of how many members of the C.I.O.?

MR. KAPELSOHN: The Council is a representative body consisting of delegates from the various C.I.O. unions operating within the State.

MR. FARLEY: How many is the membership of the Council? Approximately? The purpose of my question is to bring before this Committee whether this is the overall picture of the entire C.I.O. of the State of New Jersey, or whether it is North Jersey or South Jersey, or whether it is the considered action of the representation of the Council of the C.I.O.

MR. KAPELSOHN: The last statement is correct, sir.

CHAIRMAN: Any further questions?

MR. MILLER: Mr. Kapelsohn, as the spokesman for the C.I.O. on the Executive Article, I take it that it is the point of view of the C.I.O. that with reference to the principle of succession of the Governor, they would concur in the conclusion that any effort to limit the term of the Governor to one year in fact limits the people in the exercise of their sovereign right to command the continuance in office of a man who had discharged his trust faithfully and well. Am I correct in saying that would represent a part of the reasoning they would generally support?

MR. KAPELSOHN: Did you say, sir, an effort to limit the Governor to one year, or to—

MR. MILLER: One term. That any effort to limit the Governor to one term would, in reality, limit the people in the right of their sovereign exercise of function to command, through the ballot, the continuance in office of a Governor who had discharged faithfully and well his functions as the Chief Executive?

MR. KAPELSOHN: I can't quite agree with that approach, sir. The Constitution, to whatever extent it is a limitation, will be a self-imposed limitation by which the people determine for themselves, in the framework of this Constitution, what they think would be, among other things, an appropriate term of office for the Governor. Your question implies a limitation imposed upon the

people from some other source, as to their right to select a Governor and to retain him in office for a period. I don't agree with that, and I don't agree with that approach of reasoning. I don't take it that you express it as yours, necessarily; you are just asking a question?

MR. MILLER: This is entirely in the form of a question, and is directed to find out whether or not the C.I.O.'s position rests upon the doctrine of what you might call popular sovereignty, the right of the people to demand through the ballot the succession of a Governor in office beyond one term, or whether it stands out as some other approach to the problems of a Governor.

MR. KAPELSOHN: The feeling of the State Council that the term should be as its resolution indicates is based on the feeling that no less than a four-year term is sufficient to give the Governor a fair chance to develop and put into effect his policies, his program for his office; that a further term, at least one further term, of equal length would not be excessive, and that no facts have come to its attention which would indicate that it is inherently dangerous or injurious in any respect; that it doesn't curtail democracy, and does not necessarily, and need not necessarily, have such effect or tendency.

MR. MILLER: You are answering my question in a rather different way, Mr. Kapelsohn.

The second question that I'd like to ask Mr. Kapelsohn, if I may, is whether or not the C.I.O. has taken any position with reference to the appointment or the election of judges. It has been urged, at times, that one of the reasons for hesitating about giving the Governor more power in this State is that he now has the possibility of appointing the members of the judiciary. Is it the position of the C.I.O., with reference to the judiciary, that it should be an elected or an appointed judiciary?

MR. KAPELSOHN: I may be able to get that information for you, but I don't have it at hand at the moment. If I may make an inquiry on that (*addressing an individual in the audience*)—Do you know whether a resolution has been passed on that, Al? I hadn't been handed any.

MR. MILLER: While he is looking that up—

CHAIRMAN: I can answer that for you. They are in favor of an elected judiciary. They sent me letters to that effect.

MR. MILLER: I assumed that that was their position, and of course it is, may I say, consonant with the proposal that was submitted last week to this Committee by a representative of the Federation of Labor, and that being so, it would certainly be a very definite counterweight against the theory that vesting in the Governor more responsible powers than he now has would unduly weight his office, because he would have the power not only of

selecting the administrative officials, but judicial officials as well.

CHAIRMAN: Any further questions?

MR. KAPELSOHN: Were you asking me a question then?

CHAIRMAN: Oh, excuse me.

MR. MILLER: I was just raising the point with you. The information has not yet come apparently, except from the Chairman of the Committee. I take it that that is the position of the C.I.O., that the election of the judiciary would be a compensating factor in connection with this augmenting of the powers of the Chief Executive under a new Constitution.

MR. KAPELSOHN: I agree that it would. You must also realize that the question of the advisability of a provision for election rather than appointment of the judiciary has enough to commend it to be able to stand on its own feet, without being tied into this necessarily.

MR. MILLER: I recognize that, and you would, as a lawyer, cite the fact that our neighboring State of New York has an elected judiciary; but I am merely saying that it seems to me that it is to be considered in this total picture, when we talk about augmenting the powers of the Chief Executive.

MR. KAPELSOHN: Of course.

CHAIRMAN: Any further questions?

(No response)

CHAIRMAN: Thank you very much, Mr. Kapelsohn. Thank you for coming here.

MR. SMITH: I move a vote of thanks be given to Mr. Kapelsohn for coming here.

(Motion seconded and carried unanimously)

CHAIRMAN: On behalf of the Committee, Mr. Kapelsohn, thank you.

Does anybody else wish to speak on the Executive Section?

(No response)

I assume nobody else wants to speak on that subject.

I think the next person in order is Mr. Gibson LeRoy of the State, County and Municipal Workers, who wishes to speak on—well, you tell us, Mr. LeRoy.

MR. LEROY: Mr. Chairman, members of the Committee, ladies and gentlemen:

We have submitted a brief.¹ By "we," I mean the New Jersey Council of State, County and Municipal Workers, a union of public employees in New Jersey, not connected with the C.I.O. or the

¹ The brief appears in the Appendix to these Committee Proceedings. The material on the Trenton strike, referred to by the speaker later in his presentation, and the National Civil Service League publication are not reproduced because they were supplements to the presentation made in the brief.

A.F. of L. That brief, I assume, will be made available to the members of the Committee. Also, I assume, it will be desirable not to take all of your time to read it. But I would like sketchily to cover the points that are made in the brief. We have entitled it, from a layman's point of view, a brief for a constitutional provision for certain fundamental rights for public employees.

I think if you make any sort of a study into the background and history of labor relations, or employer-employee relations in the State of New Jersey between the public employee and his administrator or politically appointed or elected boss, or whatever phrase you want to use—public management—that you will find it has been a muddled picture. It has been a confused picture, and several outstanding attempts at clarifying it have not done the job. I propose to try to point out to you just why the job has not been done and a fundamental provision that can take care of it.

In 1942 Governor Edison appointed a special committee to study this question. It was headed, at that time, by Justice Harry Heher. That committee, Justice Heher's committee, held extensive hearings and brought out a set of recommendations which, however, never became a part of the basic law of the State. The recommendations called primarily, I think, for a democratization of employer-employee relations within the realm of possibility in the public field, taking into account its necessary limitations. In 1943, however, Attorney-General David Wilentz, about four or five days before leaving office, issued an opinion. That opinion has been bandied about the State ever since as a stopping mechanism against any extension of the findings, for example, of the original committee. We cited in the brief three instances that we are intimately familiar with, in which a great deal of rancor has developed and in which the safety of the citizens and the well-being and welfare have been threatened either by strike, or by threatened strike, or poor morale, or a threat of mass quittings within the agency involved.

I'd like to call particularly to your attention the editorial in the *New Jersey Law Journal* of, I believe, January 27, 1943, which is cited in the brief, and which shows the legal profession in New Jersey taking very sharp issue with the Wilentz opinion and saying, for example, that in the absence of prohibitory legislation the Attorney-General was incorrect in assuming that the rights of the agencies of the State to deal with the union did not exist.

The first of the three situations to which we have called the attention of the Committee is the 1946 strike that took place in the City of Trenton. I was very closely connected with that situation. At that time I was a representative of the State, County and Municipal Workers, which was then affiliated with the C.I.O. We have submitted a complete—

CHAIRMAN: Excuse me, Mr. LeRoy, is your organization no longer affiliated with the C.I.O.?

MR. LEROY: That's right.

CHAIRMAN: Thank you.

MR. LEROY: We have submitted a copy of a brief which was submitted at that time to Dr. Carpenter, President of the Civil Service Commission, and in it, and combined with a letter sent to the then mayor of Trenton, Andrew J. Duch, I think you will find a paramount example of the public employee having no recourse, nor anything that even smacks of conciliation or arbitration or anything necessary peaceably to settle issues. Dr. Carpenter wrote to the mayor of Trenton in his capacity as President of the Civil Service Commission, and also with an implied O.K., as it were, from the Governor. All of that, because of the legal loophole, carried no weight. The net result was that in spite of a citizens' committee, a very representative citizens' committee, represented by the Reverend Hantzsche, of Trenton, in spite of its efforts, the efforts of every group, the State Mediation Board, and all others, a strike did materialize, merely on the basic, fundamental point that the commissioners of the City of Trenton wouldn't sit down and talk to the employees. Not that there was any questioning that had a chance to come up about the hours of work, or the rates of pay, or anything of that sort.

The second case that we are citing is Trenton State Hospital, in which a telegram was sent by our union to Governor Driscoll on March 11, 1947. The Governor is, I assume, familiar with this picture, as are several state officials who were involved in it. There, again, the Wilentz opinion stood as the only bar against our sitting down peacefully as a group of employees to discuss the question with the heads of the department. As the brief states, it is to be said, however, to the credit of Governor Driscoll and of Commissioner Sanford Bates, that once attention was focused on the issue, the issue was settled and the employees involved now enjoy an eight-hour day. But that, I must point out, was in the state service, where the power of the Governor at the present time reasonably well exists. It does not exist between the Governor and the municipal or county levels.

The third case which is even more flagrant, and a basic denial even of freedom of speech, involved the Passaic Valley Water Commission. The documentation of that case, which we would be very glad to bring before a smaller group of the Committee, or the Committee at large, for study, but which is too lengthy to take up here and now, I think pretty well indicates and demonstrates that a fundamental civil liberty has been denied to at least three employees who were summarily discharged from their jobs after

years of service, and discharged without reason, without any stated reason. Although the Governor was interested in the case, he had to write that he was powerless to act because Passaic Valley Water Commission hid behind the false premise that the Wilentz opinion was sound.

We have also included in the brief a copy of the pamphlet put out by the National Civil Service League. The National Civil Service League has this particular report. This particular report was gotten up by a committee including from our own State Dr. William S. Carpenter and approved by ex-Governor Edison; and the other New Jersey members that I might point out are also members of the National Municipal League: Mr. B. H. Faulkner, of Montclair; Mr. Lee F. Bristol, of the Bristol-Meyers Company; Mr. Arthur T. Vanderbilt, whom you all know very well; and Dr. Harold W. Dodds, president of Princeton. I think that, plus the compendium of other names involved in that report, certainly gives as authentic and as middle-of-the-road a group of authorities on this question of public employee relations and public employee organizations, as one could find; and, as we have stated in the brief and reiterate, we are willing to accept that as an over-all yardstick at any time for employee relations, and it is not gotten up by us or organized labor.

I'd like to call to the attention of the delegates Assembly Bill 241, which went through the Assembly last session and was pigeon-holed in the Senate. There was an attempt to get authority and a *modus operandi* for the Civil Service Commission to intercede where a serious difficulty had arisen, and it extends a form of democracy by allowing the employees themselves, a certain number of employees, to initiate the action. I know very well that legislation is not a part of this Convention's work, but I think that a study of that will give a background which demonstrates how a constitutional provision could be brought into legislation.

I'd like to touch briefly on a point that is often raised in connection with unions in the public field and which may well be raised here today, and that is the question of so-called outside influence we have heard a great deal about. We have heard, for example, that the C.I.O. in the public field would make all public employees Communists. We have heard that the A. F. of L. probably would make all public employees racketeers, or varying degrees of these things. I think that sort of statement is a very dangerous generality. It is dangerous to our civil liberties. I have had considerable experience personally with both organizations and I would say that by and large those statements are false, and I would say it in spite of the fact that we ourselves have pulled out of the C.I.O. As the brief attempts to point out, there are no Communist leaders in any

organization who are going to make Communists out of public employees. You may believe that. There are no racketeers in any labor organizations, where they may exist in very small numbers, who are going to make racketeers of public employees. Nor is their influence very strong in those directions because I find from a study of the labor movement generally that the members of the labor unions do not follow false leadership in any field. By and large, they clean their own house. Or they get out, as we did in our case, without any prejudice against the C.I.O. generally, but merely against a particular international which we were forced to get out of in order to protect our own rights that we felt we should have in the State of New Jersey.

Perhaps I had better read our proposals to you. There are three, and they are placed again in the words of the layman because none of us are lawyers. They are as follows:

(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 commission, such as the Passaic Valley Water Commission, to negotiate with any employee organization 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 labor disputes between any group of public employees and the employing agency, be it (again) the State of New Jersey, county, municipality, school district, or intra-state commission, such as the Passaic Valley Water Commission.

Those are our fundamental proposals which, we feel, will do a great deal to bring to the public employee a fundamental right which he does not fully enjoy today, alongside of his fellow employee in private industry. For example, if I may take just a moment to cite one, in the operation of two water commissions or water companies, alongside of each other, the conditions of the work are identical, the hours of work and the rate of pay are not. The public employee by and large is paid less, in exchange for which it is said that he has other advantages. The private worker has the Social Security Act applying to him, and other federal acts, including the right to organize and the right to be recognized and dealt with. The public employee is excluded from it. Yet these two men theoretically could be working alongside of each other, doing identically the same work, one with all these rights and the other without. I think that sort of down-to-earth example gives us a reason why this right should be included in the Constitution.

I'd like to say just one word or so on the extension of the civil service right; that is, the legal civil service right of the Commission to legislate or to act in matters concerning all public employees. That proposition is a good one, I think, but I am, and our union is also, well aware of the fact that it creates a tremendous jar on the nerves, perhaps, of those who preach for home rule, because under the present practice the localities are allowed to choose by referendum whether or not they belong. While we would highly favor such a constitutional provision, we are also willing to accept reality in the case and say that these other provisions might be a good compromise provision.

One other point that I would like to add, which is not included in the brief, is that we feel from past experience that the Civil Service Law itself needs a complete revision, simplifying it and making it more effective by removing a good many of the ambiguities, a good many of the loopholes that exist today. That again is a legislative matter. I do not know if there is any method by which the Constitution could cover that point. Frankly, I know of none offhand. But I would like to call to the attention of this Committee the fact that we feel such evils exist, so that it will help to nullify the popular, although I think incorrect, concept that the public employee is operating within a haven next to heaven itself as far as his relations with management are concerned.

Let me close by reading to you from the opening speech by Governor Alfred E. Driscoll the following statement which I think applies here. Governor Driscoll said that (*reading*):

"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, 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 merely add that the public employees of the State of New Jersey are an important part of all the people and they feel justified in asking for any fundamental rights and liberties that are enjoyed by other people. With regard to their relations with public management in New Jersey today, they are not guaranteed those rights, so consequently they are oftentimes denied those rights. Surely, we feel, it is within the scope of the Constitution of the State of New Jersey to guarantee those rights.

Thank you. If there are any questions, I'll be glad to answer them.

MR. LEWIS G. HANSEN: I am asking this question primarily for my own information, and I don't want it to be inferred that I am taking any stand for or against your argument. What happens

in the event that negotiations break down? What is your thought on that matter?

MR. LEROY: The solution to that problem of a breakdown in negotiations, I think, is primarily a legislative matter. I know what has happened—when negotiations break down the employee himself and his organization have no place to turn. There is no form of mediation, conciliation, or arbitration today which applies to the public employee in New Jersey. I think that if you would study this bill, A-241 in the last session, you will find a suggested solution to a large number of those problems as they might arise. I will admit, because it is a fact, that you cannot apply arbitration in the same strict sense that you can in private industry. But I think that with a form of either voluntary arbitration to which both parties agree or in which they pick out a neutral judge in whom both have confidence, or a limited form whereby public attention is called to the matter by the State, and that is the sort of provision that is in A-241, that the findings of a special commission could be published and publicized so that public opinion would come to the support of the public employee. Since the public is really the employer, the public could bring its pressure against a recalcitrant administrator.

MR. HANSEN: I don't understand, then, that you advocate the possibility of a strike on the part of public employees, do you?

MR. LEROY: Well, I say this—we are against strikes of public employees. I think the public employees are as much against it as anybody. May I say that as a practical reality you have found strikes existing, and you have found them merely for what they are: an outburst of emotional suppression which cannot be legislated against, which has to be met by reasonable people, with reasonable answers and a sort of give-and-take policy.

MRS. BARUS: Mr. LeRoy, I would just like to show that I was correct. This report which I have read on public employee unions, that was not written by a committee of the National Municipal League, was it? Wasn't that the Civil Service League?

MR. LEROY: I am sorry, I misquoted. The reason I did that, I was given a copy of it at the last convention of the Municipal League. It was published by the National Civil Service League. I am sorry I made that mistake.

MR. MILLER: Mr LeRoy, as I understand your brief and your argument this morning, your suggestion is that public employees ought to have a system, an orderly system of employee relations, which would permit not only adjustments within the department for the settlement of any grievances or difficulties which may arise, but that in the event it becomes impossible to effect a final settlement within the department, that there be some third party inter-

vention to act in the nature of an arbitrator. Am I correct that that represents, in essence, your testimony this morning?

MR. LEROY: Yes, I think that is an important, necessary addition to the present municipal situation.

MR. MILLER: Do I understand that your answer to Judge Hansen is that if that kind of orderly procedure does in fact exist, that the possibility of any stoppage or interruption in that work is a very remote possibility and that public employees themselves would be prepared, if they had the assurance of such an orderly procedure, to virtually commit themselves to a non-strike or a no-strike policy?

MR. LEROY: Yes. I agree with that entirely. I might add that as a concrete example of it our union, its local of the employees in the State Highway Department have done so, and have agreed to a no-strike, no slow-down, or any form of pressure activity, because we feel that that sort of democratization of employee relations exists there.

CHAIRMAN: Mr. LeRoy, I was very much interested in your presentation. I am a little confused in a sense, though, whether or not it would be advisable to make such a statement a part of the Constitution. We have the Bill of Rights which protects people as individuals. It seems to me you are talking about a legislative matter. The Legislature could handle the thing you have in mind perfectly well.

To go on talking about your proposed court of arbitration with respect to, possibly, certain conditions of work and so forth, obviously your arbitration commission could function perfectly well. We come along now to the question of wages. Frankly, I don't see any way it could function other than in an advisory capacity, because under no circumstances could the Legislature delegate its authority to have money spent, appropriate money, without its full action. You have a definite problem there.

I am trying to present the problem as I see it. I am not trying to exaggerate it. I emphasize that I think your presentation has been very fair and very moderate in every way. I give back to you this thought, however. I think you should think it over a little more carefully. How is it possible with respect to the problem of wages to have an arbitrator, without usurping, literally usurping, the authority of the Legislature?

MR. LEROY: Let me say, Senator, that I agree entirely, and I think I attempted to state, that the question of wages cannot be delegated to arbitration. Let me, by way of clarification, say this: I think that the statistics and the problems that you are raising can be settled between the employees and their employer, provided the employer, be it a state, county, municipal, or other level, is

not allowed, as it is today, to hide behind a false concept of the law.

Let's consider, from a practical standpoint, how this theory that you expound works today. Today there is no constitutional provision saying that these groups have the right, the subdivisions have the right. We are not making it compulsory, but they have a right—it's definitely stated, let's say, in the Constitution. If it is not so stated, they turn to an Attorney-General's opinion. Now, I ask you, how much does an Attorney-General's opinion, particularly within four or five days of leaving office, represent the cross-section of the feeling of the people who elect our Legislature and our Governor, and other officers?

MR. FELLER: Was the Attorney-General's opinion based on a law?

MR. LEROY: No, it was based on the absence of law, which is the basic reason why it was attacked by the *New Jersey Law Journal*.

MR. YOUNG: If the Legislature acted in some manner, through an act, setting up a means by which the municipal or county or state officials could get together, would that satisfy you in regard to mediation?

MR. LEROY: Yes. Let me say this—anything the Legislature would do in this direction would very much satisfy me and the public employees, but I think we ought to bear in mind that this Constitutional Convention is a more representative group, above the realm, let us say, of the lower levels of politics. I think that otherwise we would need no Constitution, if we leave all fundamental rights to the Legislature. I think it is begging the issue, sir, if you say, "if the Legislature were to do it." The fact is that the Legislature hasn't done it. They even ducked it in this last session. And I think it is indicative of the fact that this group, on a higher level of government, let us say, preparing a fundamental concept of government in the State, ought to say to the Legislature: "Here is one of the limits beyond which you cannot go, because it denies basic fundamental rights to public employees."

MR. YOUNG: Well, of course, most of the difficulty comes by virtue of the fact that in the case of a great number of municipal and county employees they want increased wages. Isn't that right?

MR. LEROY: I wouldn't say that that is one of the very basic arguments.

MR. YOUNG: Don't you feel that a municipal employee, or a county employee, or state employee, can go before the Legislature or the board of freeholders or the local body to protest or ask for increased appropriations, so that they might get additional money?

MR. LEROY: Yes, he can do that. He can also stand on the rooftop and shout that he wants more money, and the effect would be about the same, I'm afraid.

MR. YOUNG: Well, getting back to Senator Van Alstyne's topic of money, how are you going to get around that, without delegating the authority of the Legislature?

MR. LEROY: Our request for a constitutional provision does not touch on that for that very reason. I think that that leeway has to be left to the Legislature, and again to the local administration, and to the department with budgetary requirements, and so forth. Let me point out, for example, how this thing, while it is necessary, works out to the disadvantage not only of the employee but of the State at large. There are departments within the State, and I know of at least two of them, where certain budgetary requests were made of the Legislature, and the Legislature turned them down. And because of the budgetary limitations, it is necessary for these departments to employ people out of title, which violates the Civil Service Law, which in turn the Legislature passed. So that you have a vicious circle in which the Legislature itself advocates a disobedience of the state law which the State Legislature put into effect.

CHAIRMAN: I would like to make an observation. It is my actual experience that this so-called ruling of Attorney-General Wilentz has been violated more than it has been observed. I know in most instances the freeholders and your mayors and councils have sat down and discussed the conditions in a very frank and open and effective manner. If that hadn't been true, you certainly would have had chaos and turmoil in this State. You agree to that, don't you?

MR. LEROY: Yes, sir. In order to eliminate the use of that by a recalcitrant public employer—oftentimes for political reasons he has a little bailiwick and he wants to maintain it, and he is afraid that if the public employees who work under him do not remain under him, and do not remain a part of him, and they learn to have a voice of their own—in order to prevent that denial of a fundamental civil liberty to public employees, I think they should be given a constitutional right to organize and to be heard.

MR. MILLER: May I ask Mr. LeRoy whether, in fact, it isn't true that in the whole field of personnel relations, while we are rather likely to say that everything comes down to the question of money, in reality the preponderance of grievances or matters of adjustment that arise, are not essentially matters that have to do with just an increase in salary, but frequently represent some minor irritation, or some minor difficulty, which frequently can be resolved by sitting down around the table and trying to arrive at some basis of a working understanding. That is, I think frequently we get our sights a little awry by emphasizing the fact that all these questions resolve themselves into money. My own experi-

ence is that the majority of questions are non-financial questions, and have to do with the orderly processes of personnel relations, which can be resolved if they are approached not only in an open-minded manner, but with some appreciation of what are the issues involved.

MR. LEROY: Yes, sir; I subscribe entirely to that statement. I might add one other point that I have found in our own experience—that many many times the employee who has brought a grievance before a fair sort of hearing and has not won that grievance has, nevertheless, gone back to his job with high morale because his boss sat down over the table and explained why his grievance was not good, and why it couldn't be granted. The other way, the wrangling and the rancor underneath continues. I think that is an important point.

CHAIRMAN: Any further questions? . . . If not, I would like to have a motion, please.

MR. MILLER: I move a vote of thanks to Mr. LeRoy, Mr. Chairman.

MEMBER: I second it.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: In behalf of the Committee, we thank you very much for coming before us, Mr. LeRoy.

I would like to call on Mrs. Merrill, representing the League of Women Voters. Will you please take the chair, Mrs. Merrill.

MRS. J. C. MERRILL: Senator Van Alstyne and members of the Committee:

I am going to talk about just one paragraph in the public officers' section of our League proposals.¹ In all proper investigations by the Legislature or by the Executive, any public officer or employee of the State or any of its civil divisions who shall refuse to testify or who shall refuse to waive immunity for prosecution with respect to any matter on which he may testify, shall thereby forfeit his office or employment and he shall thereafter be ineligible to hold any public office or employment. The wording of this provision is recommended. We say that a public office is a public trust and not a private prerogative. No honest official would object to testifying about performance in office.

Now, I would like, please, to read this statement in regard to the waiver of immunity clause (*reading*):

"The League wishes to emphasize that this proposal is concerned only with the waiver of immunity by public officers and employees when they are called upon to testify at proper investigation, by the Legislature or by the Executive. Elsewhere in our proposals (*p. 6* and *p. 9*) we set forth provisions for investigations by the Governor and by the Legislature.

¹ The proposals appear in the Appendix to these Committee Proceedings.

Both the 1942 and the 1944 draft Constitutions contain this waiver of immunity clause. The 'Model State Constitution' has no special section but gives the Legislature 'power to compel the attendance and testimony of witnesses,' etc.

In 1944 the League stated, 'This provides the Legislature with a legitimate check on all phases of the other branches of the State Government and of local government.' Even those who feel it is not necessary to include a provision regarding investigations in a Constitution agree that the Legislature should have power to gather information needed for the proper discharge of its legislative function and that a provision for investigation is laudable in its primary purpose. Commissioner Spencer Miller at the hearings held by the Joint Committee of the Legislature in 1942 said, 'A Legislature is by nature incapable of acting as a responsible chief administrator, but it can and should act for the people year in and year out as the critic of the conduct of administration.'

Inasmuch as public office is a public trust, should a person be allowed to continue in office if what he says at a legislative hearing makes him liable to prosecution in the courts? In the Executive Section of the League proposals, we clearly say that the investigation is to be made only of the officer's conduct *in office*. In the Legislative Section, we limit the field of investigation to information needed in preparing for legislative action.

While we are not concerned with the other phase of this (namely, the invasion of an individual's rights as guaranteed in the Bill of Rights) today, it should be noted that these rights are protected to some extent by the word 'proper,' used as an adjective with 'investigations.' The 'no person privileged' phrase is not included in our proposals. The privilege of the clergy, of lawyers, doctors, etc., to refuse to testify with respect to confidential communications is held by some to be a right above constitutions. However, if there is serious doubt of this, a provision can be included safeguarding this privilege.

The League has separated this waiver of immunity clause from the provision of power for the Legislature to compel testimony, so that there may be clearer understanding of the two and that the provision for the normal legislative power may assume a position similar to that in other state constitutions."

CHAIRMAN: Mrs. Barus.

MRS. BARUS: I would like to ask a question about this underlying phrase, "in office." I am afraid I am being confused about that in committee discussions and here. Do you mean the investigation can only relate to the public acts of the official acting in his public capacity and that you would bar an investigation of his private acts during his term in office which might, however, bear—

MRS. MERRILL: Now, let me quote for you from the Executive Section (*reading*):

"The Governor may cause an investigation to be made of the conduct in office of any state officer, except a member of the Legislature or judicial officer. After notice, service of charges, and an opportunity to be heard at a public hearing, all as shall be provided for by law, the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office."

MRS. BARUS: That, I assume, won't be malfeasance or misfeasance. It would mean that it relates only to his office and not to anything he has done during his office.

MRS. MERRILL: I looked up those words, and "malfeasance" is an illegal act, official misconduct, and "misfeasance" is doing wrongfully an act which might be done in a lawful manner.

MR. FELLER: I would like to ask two questions. You made a statement that the privilege of certain people from revealing confidential communications is held to be a right above the Constitution. Just what do you mean by that?

MRS. MERRILL: Well, we did not go into that very thoroughly. The reason I bring it out here is because what we did say in our committee discussions was that if there is any question of people opposing the Constitution because they feel that right is threatened, then the Constitution ought to provide against such a threat.

MR. FELLER: Don't you think you are getting into detail? In the 1944 revision there was a provision for investigating, etc. We tried to write it in general constitutional language. It resulted in a lot of misunderstanding, difference of opinion and confusion. Now, if we have to go into detail to make it clear, don't you think it should be left to the Legislature?

MRS. MERRILL: You mean the power to investigate?

MR. FELLER: The power to investigate, or what you recommend.

MRS. MERRILL: Well, now, I am speaking for the League of Women Voters. What I have read are the official proposals as adopted in council. Beyond that, I would not be authorized to say. We could discuss it again and come back.

CHAIRMAN: Any further questions? Senator Young.

MR. YOUNG: You understand "in office" means just the office hours of the particular office that they hold.

MRS. MERRILL: No. I would not say "office hours." I would say his official conduct in relation to his office.

MR. YOUNG: Well, the courts have construed that to mean, more or less, the official hours that he is in office. Is that what you mean?

MRS. MERRILL: No, I don't think that is what we mean.

CHAIRMAN: Any further questions?

MR. MILLER: May I ask the question whether in this memorandum which has been submitted in behalf of the League of Women Voters, when you use the phrase, "a right above the Constitution," whether you felt—whether it was the opinion, rather—of the members of the League, that this was what you might call a part of the custom of the Constitution? That is, it has come down to us over the years that the relationship of a lawyer and his client, doctor and patient, a priest and his parishioner, that those are privileged relationships. Those have not only been privileged by the courts, but they are part of what we think of and refer to sometimes as the custom of the Constitution. I wonder if that is the idea which was back of this phrase which has been written into your memorandum?

MRS. MERRILL: I believe it is.

MR. MILLER: Thank you.

CHAIRMAN: I wish to tell you, Mrs. Merrill, that speaking for the Committee, we are very proud of the fact that you are quoting a member of our Committee to prove your point.

May I have the usual motion?

MEMBER: I move a vote of thanks to Mrs. Merrill.

MEMBER: I second it.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: In behalf of the Committee, thank you very much for coming before us, Mrs. Merrill. . . .

Mrs. Edwin Bebout.

MRS. EDWIN BEBOUT: Is it the statement on civil service that you want? I prepared a statement on civil service, and I have another statement on public officers and employees and the duration of—

CHAIRMAN: Both are in order. May I present Mrs. Edwin Bebout. You also are representing the League of Women Voters?

MRS. BEBOUT: Yes. I am here as a representative of the League of Women Voters.

Suppose we take the statement on public officers and employees. We suggest that Article VII be changed as follows:

First, present Section I dealing with militia officers, should be eliminated entirely. We believe that those provisions should be removed from the Constitution and fixed by the Legislature. I think there has been a little controversy on that.

Second, we suggest that every appointive state officer should take an oath to support the Constitutions of the United States and of New Jersey, as the members of the Legislature do now.

Third, we recommend that any compensation or fees received by any person in an appointive state office or position should become a part of the general treasury. That is in line with a proposal we made on the subject of finance, which will be given to that Committee.

Fourth, we suggest the deletion of the following officers from the Constitution: Attorney-General, State Treasurer, Comptroller, Prosecutor of the Pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, Secretary of State, Keeper of the State Prison, county clerk, surrogate, sheriff, coroner, justice of the peace, and militia officers, because provisions for such officers should be a matter of legislation and not constitutional law. The question of the appointment of an Auditor is considered under the section entitled "Legislative."

The League of Women Voters recommends what you have just

been hearing: clear and detailed wording of the provision regarding testimony by public officers.

CHAIRMAN: Any questions? Colonel Walton.

MR. GEORGE H. WALTON: You would continue the Governor as Commander-in-Chief of the militia?

MRS. BEBOUT: Why yes, I suppose so, of course.

MR. WALTON: Can he be an executive Commander-in-Chief if everything to do with the militia or military and naval affairs of the State is turned over to the Legislature?

MRS. BEBOUT: Well, I suppose what we had in mind was the naming of particular officers and the very detailed set-up now included in the Constitution. It takes up a proportionately large part of our rather short Constitution, and we felt that all details should be left out. Of course, whatever constitutional provision is necessary for setting up or giving the Governor proper authority as Commander-in-Chief should be included.

MRS. BARUS: The point on the fee received by state officials—you meant, I suppose, that all fees received other than salaries should be paid directly into the State Fund?

MRS. BEBOUT: Yes, certainly. I believe some department heads or some officers of government have been paid on a fee basis. We think that is not proper because, in some cases, those fees have run into what would amount to an inordinately high salary. We feel that the salaries should be set by the Legislature, and monies received by an official of the State for services rendered to individuals or groups should go into the State Fund.

MR. FELLER: Suppose the Judiciary Committee should decide, and it is approved by the Convention, that the county courts should be retained. Do you still favor the elimination of the office of county clerk, sheriff and surrogate from the Constitution?

MRS. BEBOUT: Well, I don't know whether the League as an organization has gone very deeply into that. We have favored the proposals that are now being made for a unified court system, but it seems to me that those officers would, some of them, become a part of a Department of Law that we hope will be set up as an executive department. It seems that the naming of a particular officer in the Constitution is a limitation on desirable governmental changes and should be, so far as possible, left out. The Constitution should name only the officers who are considered fundamentally necessary and whose duties and so on are generally recognized and should not be subject to easy change by the Legislature.

MR. SMITH: If you were to take the surrogate and sheriff and these county officers and give the power to the Legislature and take it away from the Constitution, might not the Legislature give that power of appointment to the Governor? Hence, you would rob

the counties of home rule and the right to elect their own officials.

MRS. BEBOUT: We feel that the naming of certain officers in the Constitution is in some ways preventing counties from acquiring the sort of home rule they might desire.

MR. SMITH: Well, at the present time the surrogate and sheriff and county officers are elected by the people of the county. It would seem to me that you would in that way be giving an opportunity to rob the counties of the right to govern themselves with their local officers.

MRS. BEBOUT: I don't know. I think the counties have a lot of power in the Legislature. I think that if they don't want the Legislature to take certain rights away from them, they are rather able to take care of themselves. The fact that those offices are in the Constitution makes it extremely difficult for the people of counties to press for changes they may consider desirable.

MR. SMITH: I don't want to pursue it, but you can visualize that the Legislature might be of a different opinion than the Governor. Again, there might be several predominant counties of one party, and the majority of the counties might be of another party in the Legislature. The latter could see how they could deprive those counties of that power and give it to the Governor, if the Governor happened to be of their own choice and choosing, and strengthen their own machine. I think we ought to do everything we can to avoid taking power away from the people, if we can retain it there. So far as I know, there has been no objection to the county offices remaining as they are.

MR. MILLER: Mr. Chairman, may I ask Mrs. Bebout whether in the proposals which have been submitted by the League of Women Voters in connection with these several matters, there is not back of this proposal this essential recommendation: that the naming of constitutional officers in the basic charter is in one sense a survival of an earlier day, and that in the interest of not only simplification but of focusing public responsibility on the Chief Executive, the elimination or the drastic reduction of constitutional offices will effect this matter of developing a responsible Chief Executive.

MRS. BEBOUT: Why, yes; we do. It seems to me that the present set-up of naming these officers, not all of whom are elected by the people, some of whom are appointed by the Governor, gives the Governor a very heavy power of appointment.

MR. MILLER: That leads, Mr. Chairman, to my second and last question—as to whether or not this doesn't give a perfect illustration of the way in which you can decrease the number of appointments on the part of the Governor and at the same moment increase his responsibility and his capacity for executive leadership.

We said repeatedly that the Governor has too many appointments over little things and not enough power over large things. Isn't this recommendation of the League directed precisely to giving him important appointments, few in number, and reducing this vast array of little appointments—I use the phrase not invidiously—a lot of little appointments around the State which frequently take on the character of merely being a form of executive patronage?

MRS. BEBOUT: Exactly. I think it is just that type of appointment that permits the building up of what was spoken of earlier this morning as a political machine. I think if we take that sort of thing away from the Governor and put it into orderly departments and arrangement provided for by the Legislature, that we do limit the Governor's power to build up the undesirable sort of political machine which people who oppose letting the people reelect the Governor—and we propose to put it in that light—fear.

CHAIRMAN: Did you have a question, Senator Young?

MR. YOUNG: Yes. You stated, Mrs. Bebout, that you wanted to eliminate certain officers, and you named them. Are there any that you think should go into the Constitution?

MRS. BEBOUT: An Auditor.

MR. YOUNG: An Auditor? That is the only one?

MRS. BEBOUT: Yes.

MR. YOUNG: I want to press Mr. Smith's point a little bit further. Suppose the Legislature and the Governor were of one political party, and next year in an election the political party was changed, and they got together and passed an act of the Legislature providing that all surrogates, sheriffs, county clerks and all the other county officers should be appointed by the Governor and confirmed by the Senate, so that they could immediately, when everyone of these came into power, change over. In other words, you would have, for instance, a Republican in Hudson County and maybe a Democrat in my county, whereas they could never get elected there, because that was what the Legislature might do under certain circumstances. Is that what the League of Women Voters desire?

MRS. BEBOUT: No.

MR. YOUNG: That could happen, though, couldn't it?

MRS. BEBOUT: Could it? I don't think it could under the sort of Constitution that we are proposing in this document. We propose executive departments limited to 20, of which the Governor appoints the head. We also propose a change in the courts.

MR. YOUNG: Well, Mrs. Bebout, if there was nothing said in the Constitution providing for an election of a county clerk by the voters of a county, and it was left blank and left up to the Legislature, as you desire to do it, and the Legislature passed an act

providing that the county clerk of every county shall be appointed by the Governor and confirmed by the Senate, wouldn't you find that condition to be the law?

MRS. BEBOUT: I am not lawyer enough to know whether that could happen under any proposals that have been made here. I know it is very far outside the spirit of any of the proposals that have been made. One of the things we wanted to prevent is the frivolous naming of officers or setting up of officers to be named by the Governor or the Legislature. We have proposed that the Legislature shall be expressly prohibited—

MR. YOUNG: This would be by the Governor, and as long as no provision was made in the Constitution, which is what you are telling us now, then the Legislature could provide that the officer be appointed by the Governor or elected by the people of the respective counties.

CHAIRMAN: I don't want to shut off the questions, but I would just like to recommend that we shut it off because it is time to eat and we have to have another hearing this afternoon. Judge Feller.

MR. FELLER: This supplements what Mr. Young said. There is no doubt that we need county clerks or someone in a similar capacity; we will need sheriffs; we will need surrogates as long as courts are in the county court house. Now, if that is not in the Constitution, the Legislature can do anything with those—

MRS. BEBOUT: Wouldn't the duties that a county clerk performs come within the scope of a Department of Law?

MR. FELLER: Well, that's the question. Do you want to propose that the Legislature should either decide to make these appointments by joint session or give the Governor the power? Aren't you taking away the power from the local government, from the people, and enlarging someone else's power in the State?

MRS. BEBOUT: I know it was the intention of the League of Women Voters to rule out these appointments by joint session, which is a custom long abused and protested against by almost every Governor we have ever had and by high legal authorities in the State. Whether or not we have written proposals that would preclude that, I don't know, but I do know that was our intent.

MRS. BARUS: I would simply make the point that under any Constitution, the Legislature always has enormous powers. You can't set up a thing so that it doesn't. It could make vast changes outside of a very few fundamental things in the Constitution. You would just have to trust your Legislature. As we have been saying over and over, they are the representatives of the people. Presumably we could trust them to pass reasonable laws or the people would protest if they didn't, but in any case, if you are going to have a Legislature at all, it does have very vast powers. As I under-

stand it, it is the repository of all powers not expressly allocated to other branches of the government. It always does have very vast powers, so there is no way of setting up an orderly government without giving the power to it.

MR. FELLER: By the same token, the Constitution should protect home rule and local government as much as possible.

MRS. BEBOUT: I felt like saying when either Senator Young or Judge Feller made their comments, that I would hope that if a Legislature or a Governor behaved as they pointed out they might, there would be practically a complete turnover of both Legislature and Governor in the next election.

MR. MILLER: I move a vote of thanks to Mrs. Bebout.

MR. FELLER: I second it.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Thank you very much, Mrs. Bebout. Is there anybody here who wishes to be heard on the subject of the Executive, Militia and Civil Officers Section, who has not been heard? We will adjourn to 2:15 o'clock, when we shall come back to see if anybody else wishes to be heard at that time.

(Recess for luncheon at 1:05 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 1, 1947

(Afternoon session)

(Executive session)

(Minutes)

A meeting of the Committee was held at 2:00 P.M. in room 109, Tuesday, July 1, 1947. Members present were: Chairman Van Alstyne, presiding, Barton, Barus, Eggers, Farley, Feller, Hansen, Smith, J. S., Walton and Young.

Smith moved to postpone discussion of the right of the Governor to succeed himself. Motion seconded and carried.

Barus moved that the Committee request the Committee on the Legislative to hold a joint meeting with it in the near future, in order to discuss provisions affecting the work of both Committees. Motion seconded and carried.

The Committee then took up the question of placing a constitutional limit on the number of the principal departments.

Farley moved that no such limitation be included in the Constitution, acting upon the recommendation of Senator Armstrong. Motion seconded.

Discussion brought out the following points: the difficulty of combining the present departments and commissions; pressures on the Legislature which tend to prevent consolidation by law; similar practices in the management of large business corporations; similar provisions in other state constitutions; necessity for legislation to define the functions of the departments; the fact that such limitation on the number of departments would decrease the number of appointments made by the Governor. The motion was withdrawn.

Farley moved that there should be no more than 20 principal departments of the government, with powers and duties to be determined by law. Motion seconded and carried.

During the afternoon session, the Committee moved into the Convention Hall to hear from Commissioner Sanford Bates, who appeared at the request of the Committee to speak on the pardon and parole provisions of the Constitution.¹

* * *
Respectfully submitted,

JANE E. BARUS, *Secretary*

¹ The minutes here summarize the proceedings, the record of which follows these minutes.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 1, 1947

(Afternoon session)

(The session began at 2:15 P.M.)

PRESENT: Barton, Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: This is a public meeting of the Executive Committee. We have asked Commissioner Sanford Bates of the Department of Institutions and Agencies to come and meet with us to discuss the question of the Parole Board. Commissioner Bates has brought with him his first assistant, I believe, Dr. Bixby, and a member of his Board of Control, Judge Thomas J. Stanton.

Commissioner, I think maybe the best way to start this meeting would be to ask you if you would give us your ideas as to how you feel the sections in the present Constitution that deal with the matter of the Parole Board should be changed. Commissioner Bates.

MR. SANFORD BATES: Mr. Chairman, and gentlemen: The change necessary from the constitutional standpoint would seem to be a fairly simple one in paragraph 10 of Article V on the Executive.

MRS. JANE E. BARUS: Paragraph 10, Article V?

MR. BATES: That's correct, Mrs. Barus. Reference is made to the granting of pardons and the language used is (*reading*):

"The Governor or person administering the government, the Chancellor and the six judges of the Court of Errors and Appeals, or a major part of them, of whom the Governor, or person administering the government, shall be one, may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment."

My suggestion would be that everything in that section be deleted after the word "Governor" and up to the words "shall be one."

CHAIRMAN: So that it would then read what, Commissioner?

MR. BATES: It would then read: "The Governor may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment."

Judge Stanton suggests if other changes in the Constitution are not made which would cover that, the other phrase, "or person administering the Government," should be retained.

CHAIRMAN: But how would you handle paragraph 9 under the same Article?

MR. BATES: Well, it seems to me to be pretty good law, Mr. Chairman, that the power to grant a pardon includes the power to grant any clemency less than a pardon. That would include a reprieve.

CHAIRMAN: In other words, you would leave paragraph 9 as it is.

MR. BATES: I think paragraph 9 could be eliminated. I think that paragraph 10, the power to grant pardons, would include the power to grant reprieves or to extend the operation of the time.

CHAIRMAN: So you would eliminate 9 and then you would use 10 as you have stated it before. I'm trying to find here how the 1944 revision treated that. Does anybody remember?

MR. BATES: I have that here.

CHAIRMAN: Oh, I see, it's on page 42 of our yellow book.¹

MR. BATES: On page 13 of what I have. Shall I read that?

CHAIRMAN: Please.

MR. BATES: Under this draft, which is marked "Revised Constitution for the State, to be submitted to the people at the General Election on November 7, 1944," on page 13, Article IV, Section II, paragraph 1 (*reading*):

"There shall be a board of pardons in the executive branch of the government which shall consist of the Governor, or person administering the government, and of four other members who shall be nominated and appointed by the Governor by and with the advice and consent of the Senate for terms of four years and until their successors are qualified into office and who shall receive such annual salaries for their services as may be provided by law. At least one of said four members shall be an attorney-at-law of this State."

And the second paragraph:

"The board of pardons, by a majority of all its members of which majority the Governor, or person administering the government, shall be one, may grant pardons, after conviction, in all cases except impeachment. The board of pardons, by a majority of all its members, may remit fines and forfeitures and suspend the collection of the same, but in proceedings as to these matters the Governor, or person administering the government, need not participate."

Three:

"The board of pardons shall have no power to grant paroles except as provided by law."

Four:

"The Governor, or person administering the government, shall have the power to grant reprieves except in cases of impeachment."

CHAIRMAN: Do I understand that you would prefer to eliminate all the proposed languages—I mean the language in the proposed

¹ The reference is to a comparison between the proposed revised Constitution submitted by the Legislature to the voters of New Jersey in 1944, and the 1844 Constitution (Charles deF. Besore and John B. McGeehan, *comps.*)

revision of 1944—and then eliminate paragraph 9 and cut down paragraph 10, as you said, and that that would be all you would have in the Constitution?

MR. BATES: I didn't address myself directly to the question as to what we would do with the 1944 draft.

CHAIRMAN: Oh, I see.

MR. BATES: You asked me what I would cut out of the Constitution.

CHAIRMAN: What would you do with the—you see the '44 draft—those four paragraphs of Section II, that you just read? Do they take the place of old paragraphs 9 and 10?

MR. BATES: I suspect they do, yes.

CHAIRMAN: Yes. Well, what do you think should be done with any of the new matter that is in the proposed '44 revision?

MR. BATES: My theory of the whole business is, Senator, that the Governor should be concerned with such applications as are purely pardons in our field today—that is, applications for clemency. We do not regard paroles as manifestations of clemency. We think that the Constitution of 1844 referred to what was then the only method of releasing inmates from imprisonment, namely, by pardon. Since that time, a great deal of experience has been built up with the administrative device which we call parole, which is a method of releasing men from prison when the suitable time comes for their release. It's not an exercise of clemency, and it seems to me that the only reason for placing the Governor in the picture is for the reason that by common law and by tradition, clemency had to be exercised by the sovereign. The king can do no wrong. The king has the right to pardon his subjects, and that power has been carried down and always, so far as I know, vested in the Chief Executive. If the Chief Executive wants to forgive a man or pardon him, I don't think any statute or constitutional provision can take it away from him.

On the other hand, the way we operate in most states today, we feel that the business of releasing a man from prison is such an important date in his life that he ought to have not only the benefit of supervision but he ought to have—the public ought to have—the protection of having been released into a guarded and controlled environment. We do not associate parole with clemency, but we regard it as part of the sentence.

I do not say there shouldn't be legislation, but I do say that with this change in the Constitution the way would be open for the Governor and the Legislature to propose a parole system which could be operated under the direction of the Governor and by people appointed by him, but operated as an administrative process rather than as a form of clemency.

MR. MILTON A. FELLER: Mr. Bates, under present law does the Department of Institutions and Agencies control all parole?

MR. BATES: No, we don't control all of the parole system. In all of the correctional institutions except the State Prison and a few cases at the women's institution—and that's because there's only one women's institution and women go there whether they're murderers or whether they just neglected their children—the board of managers is given the right under the Institutions and Agencies Law to vote a parole in the case of indeterminate sentences where the character of the sentence presupposes determination at a reasonably early date. But the board of managers at the State Prison is limited in its dealings with parolees in such cases as have arrived at the minimum of the sentence; whereas no such limitation applies to the Court of Pardons.

MR. CHARLES K. BARTON: Commissioner, what do you think of a single plan of having the Governor appoint a parole board of four, with the Governor considered *ex officio*, to decide upon all cases of parole and clemency in all institutions?

MR. BATES: There are a good many parts to that question, Senator.

MR. BARTON: Well, what parts are objectionable to you?

MR. BATES: Well, I may say to you, Senator, and to the members of this Committee, that I talked this matter over rather quickly with the Governor this morning and he wanted me to assure you and the Committee that he is deeply interested, of course, in this phase of administration, but that he did not want me to convey to the Committee any intimation whatever that he was looking for more power or influence in the matter of parole; that under the present set-up he is a voting member of the Court of Pardons and his veto is the deciding factor in this consideration, so that any new procedure that was set up would not add to his power and, as a matter of fact, might detract.

If, more nearly answering your question, we admit this thesis which I just referred to—that pardon is an act of forgiveness and that parole is a part of the sentence and is an administrative device—then it seems to me there wouldn't be any necessity for burdening the Governor with the administration of the Parole Act; but he will retain as an indispensable part of his powers the right to pardon anybody whether they are eligible for parole or not.

I do think that the present system, part of which is made possible or necessary by this constitutional provision, is not the best one that could be devised. Whether it should be four or five or three members, whether it should permit cooperation by the present boards of managers that meet in the various institutions, or whether the Governor should be a member or not, are all involved in your

question. That's why I hesitated to say "yes" or "no." But I think that any legislation which had for its general object the integration of parole in the State, the fixing of responsibility on people who were appointed for that purpose and who were trained professional people and who were responsible to the Governor, would be in the line of progress.

MR. BARTON: Or that could be done, Commissioner, and the Governor retain his power, his rights—of course, his sovereign rights . . .

MR. BATES: It seems to me that if this change which I suggested were made, the Governor could still by legislation—could even call upon the Court of Pardons, if it's still there, or he could call upon a new board, or he could call upon any existing board for advice and recommendation. That seems to me to be a matter of legislation, and in that event the Legislature would undoubtedly consult other states and would determine what is the most effective and protective system of parole.

It's unfortunate, but in this State we have confused the idea of pardon with the idea of parole. I sat on the Parole Board in New York for five years and I almost made it a practice to tell applicants who came before us that they were still serving their sentence when they went on parole; they were not forgiven. We didn't look with much approval on the man who said that he was not guilty. We didn't order parole because he was not guilty; we arranged for parole because the time had come when it would do him more good to be out than in, and he could be released with safety to the public and with less drain on the public purse. Under this view that parole becomes an extension of the sentence. Some day, if you'd like me to, I could give you statistics to prove that parole, properly operated, does not shorten sentences which the court applies but in many cases lengthens the sentence and increases the protection instead of diminishing it.

MR. FRANK S. FARLEY: Commissioner, will you explain to this Committee your present system—the mechanics of such a system—in order to obtain a parole?

MR. BATES: In the institutions, with the exception of the State Prison, any inmate can appear before the board of managers or can have his case brought up by the staff committee or the classification committee, whenever it seems proper for him to be released—that is, subject to certain rules and regulations, of course. There is usually a general minimum at places like Jamesburg and Annandale and the State Home, in advance of which it would be rather difficult to get a person paroled.

You may have in mind more specifically the State Prison. In the State Prison, if a man has reached his minimum, less com-

mutation time for good behavior and diligence—let's say his sentence is not less than six nor more than ten years and he has earned through commutation a year and a half. He would come before the board of managers at the expiration of his minimum. If he wants consideration before that time, he has to file an application with the Court of Pardons which, under its rules, refers the application to the institution and gets all the information that it can. At its meetings, which ordinarily are twice a year with probably adjourned meetings or special meetings if they need them, that application is heard.

I am told at the last session there were over 400 applications before the Court of Pardons from the Prison alone. Now, the man in Prison is not limited in his application to the Court of Pardons because his minimum has not arrived, but he cannot appear or apply in advance of his adjusted minimum to the board of managers. He may afterwards, if he wishes—that is, after his minimum arrives—he has the option of appealing to the board of managers or to the Court of Pardons.

Now, there are a few other limitations. If he is a second or third or fourth offender, the board of managers is limited in the amount of parole they can give him. If he is a second offender, he cannot be paroled until half his maximum; if he is a third, it is three-quarters; if he is a fourth, he must serve it all. But in that very statute which prescribes those limitations, the words are also used that "nothing herein shall be construed to interfere with the constitutional power of the Court of Pardons," so that that opens the extra door to the prisoner. If he is barred from going before the board of managers, he can still go to the Court of Pardons.

CHAIRMAN: Commissioner, who promulgates the rules and regulations in New York, the board appointed by the Governor or the Legislature?

MR. BATES: You mean the State Board of Parole?

CHAIRMAN: The State Board of Parole—or is it determined by an act of the Legislature?

MR. BATES: Well, there is a legislative act, it's a 1930 set-up, for the state parole system in New York, but the three members are appointed by the Governor with the advice and consent of the Senate, for staggered terms of six years each. When I was on the board there were three. I understand that this year they've brought in legislation to increase the number to five.

CHAIRMAN: But the system itself is established by law. Is that correct?

MR. BATES: Yes, sir.

CHAIRMAN: Is it bi-partisan in New York State?

MR. BATES: Well, I was a Republican; I was appointed by a

Democrat—I don't know what that means.

CHAIRMAN: Well, is there an equal division of the board?

MR. BATES: Well, there can't be an equal division in a board of three, but there can be of four, you know. The purpose, as I have heard it expressed, is to have one man from Albany, and they've tried to carry out that representation. There has been little regard, as I have observed it, to politics in the board. In fact—I don't know whether this goes on the record—I was offered the job, the first job, on the New York State Board by President (then Governor) Roosevelt in 1931, so that I think I'm safe in saying that from that time on appointments have been made without regard to politics.

CHAIRMAN: What have you to say as to the present system of parole in New Jersey, Commissioner? Do you think it should be improved? Have you any suggestions to the Committee that you feel may involve basic and constitutional law to correct any possible evils which may exist today?

MR. BATES: I don't want anything that I might say, Mr. Chairman and Senator Farley, to be construed as any criticism of the Court of Pardons because—

CHAIRMAN: This is all constructive criticism, Commissioner.

MR. BATES: I think that they're high-minded men, as I have known them, and I think, with the limitations under which they work, they've done a reasonably good job. I do feel, though, that the business of parole is a full-time, professional job, and I think that something nearer the approach of the New York system would be advantageous in the long run. I can't give any statistics to impeach the work of the Court of Pardons and I don't think there's any tendency generally to do that. Up to a few years ago there was very little supervision in the community over men who had been released by the Court of Pardons. That has, as you know, to some extent been remedied, and a much larger corps of parole officers has been employed. So that if we change the system, with a more rigorous supervision, we might even get more violations to begin with than we would have now from the Court of Pardons.

CHAIRMAN: Does the New York system have the veto power of the Governor over this appointed four or five which now exists?

MR. BATES: I didn't get the question.

CHAIRMAN: Does the New York system give the power to the Governor to override the determination of the four men now on their board?

MR. BATES: No. The case of *James J. Hines* against the *New York Parole Board* is probably the most straight-out legal interpretation of parole that's been delivered. That was in the highest court of appeal in New York State, and was to the effect that so

long as the Board of Parole administered its job, performed its functions in accordance with the law, there was no review.

CHAIRMAN: You think the Governor should have that inherent power, Commissioner?

MR. BATES: I do not. No, sir.

CHAIRMAN: That's all. Thank you, Commissioner.

MRS. BARUS: Commissioner Bates, I'd like to see if I can sum up your opinion in a layman's words, to see if I am saying it fairly accurately. Commissioner, you want to emphasize in our minds that parole and pardon both happen to begin with "p" but they have nothing to do with each other. A pardon refers to the executive clemency which is exercised by the Governor as the top official of the State in cases where, in spite of all the law can do, he feels that some harshness has been worked and that for some special reason clemency should be given. Parole is part of the system of punishment under the laws of the State, of offenders against the State, and is part of the sentence which should be determined upon by the special people who are trained to administer those institutions. They should have an orderly process set up by law, by which a man in an institution can appeal to be heard. But their decision should really be final.

Now, you believe there should be a board representing the Governor which should sit and listen to the recommendations of the professional board of managers but which does have the power to override them if, in its opinion, they are wrong? Would that be—

MR. BATES: Well, yes. I think I can answer your question and perhaps Senator Farley's a little more fully. In a sense, the Governor always has the last word in releasing a man from prison. He still has the power of pardon which he uses without any legal or judicial control, which he uses in the name of clemency, so that at least to that extent, Senator, if the Board of Parole should refuse to parole an individual, the Governor in New York would still have the right to release him under his right of pardon. But he would have no right to control the decision of the people that he appointed.

Now, to come back to Mrs. Barus' question a little more specifically. We think that there is a lot of the element of restraint about good parole. You can put a man in an iron cell, as some of us have seen, with shackles on his feet and tie him to the bars, and that's in prison; or you can put him in a swanky prison, like one of those in New York where he is almost entirely on his own, and that's in prison. But there's just as much difference between the two, even from the point of view of clemency or leniency. So that, in a modern prison system you would have closed cells; you would have rooms more or less like English prison rooms; you might have

dormitories such as we have at Annandale; and then you might have an open honor camp like we have down at Leesburg in South Jersey, so that the progression is more or less gradual and removal from Leesburg to a restricted parole is just the next step in the administration of penal discipline.

That's why I say—perhaps I said so rather dogmatically—the Governor should not be burdened with that detail of administration although he retains the power to appoint the Parole Board and, if necessary, should have the power to remove them for cause, and he can veto any action of theirs which keeps the man in. Now, under the New York system an additional safeguard was set up in that each one of the three had to vote for a parole but any one could block it. I mean, if any one of the three members was conscientiously opposed to parole, his vote blocked the release. We also worked under the specific injunction that no prisoner was released merely because he was a good prisoner. In other words, the commutation system takes care of the good prisoners. The parole system is designed to take care of the good parolee, the good citizen, and he is not to be released as a reward for good conduct but only, first, if there is a reasonable probability that he will live and remain at liberty without getting in a clash with the law, and second, if his release is not incompatible with the welfare of society.

Now, if there were no other objections to the New Jersey system, it is archaic in its terminology because the word parole nowhere appears in the statutes which give the right to the Court of Pardons. They appear in the title of Title 2, Chapter 198. Section 2 or 3 refers in the title to parole or licenses to be at liberty. But nowhere in the text, either in the Constitution or in the laws passed under the Constitution, does the word "parole" appear. I merely cite that to show that whatever else is done by this Convention, I think we should get the terminology up to date.

I think we should intimate that at least there are other methods of releasing men from prison than by the clemency route. And again, I think—I am quite serious about this—it has a wrong impression upon the prisoner himself to think that he's released because he has been forgiven or because he's been pardoned or because he's got clemency, when, as a matter of fact, in most parole cases clemency plays very little part. A woman comes in to the reformatory and she has a venereal disease. She stays for 16 months because it takes 16 months to make her safe to go out again. There is no question of clemency connected with it. You take an era like we had ten years ago when jobs were almost impossible to secure. We kept thousands of men in from parole because they couldn't get jobs. No question of clemency was involved; it was a question of public safety. You can do that under a parole system. Or take

a bad family situation; a man and wife fight constantly. Once you've taken care of that situation outside you develop a new one—you might parole the man, not because he's forgiven but because the chances are he can live and behave himself when he gets out. I am only using those two or three examples to see if I can't carry out that distinction which you raise, Mrs. Barus.

MRS. BARUS: I think I understand that distinction. The thing that I am not quite clear about is the relationship between the board of managers of the institution and the professional people in charge of the institution and the three-man Board of Pardons, for example, in New York State. Do they hear the recommendations of the professional personnel and then make a decision, and can they override those?

MR. BATES: In the New York State institutions there are no boards of managers in the prisons. There is a board of managers at the women's reformatory because there there are two types they parole, the reformatory cases and the prison cases. The Board of Parole used to go there to hear the prison cases, the board of managers heard the others. But in the adult penal institutions of New York there are no boards of managers. The board of three—

MRS. BARUS: Who recommended the parole?

MR. BATES: I'll tell you. The board of three was required by law to visit every prison once a month, and at that time all cases came on the list that were eligible for parole under the New York law during the succeeding month. And we heard them all, whether they applied or not. And we had records before us—I hoped to be able to get you some of these today but I phoned over yesterday and they didn't come, but I can leave this one with you—this contains all the information that's placed at the disposal of this board of three, and includes the warden's report and recommendation, the psychiatrist's report, the physician's report, the industrial superintendent's report, the report of the recreation supervisor if there is one, the psychologist's report if there is one, and then a local parole officer, an employee of the board, also files a report. In addition to that, one of the three members of the board is expected to visit the prison in advance of the formal hearing and have a talk with the prisoner, and then file a brief report of his impression of the prisoner. That's the way the facts are built up so that—they used to kid us and say we could handle a parole in three minutes. Well, perhaps in actual time it would take from three to ten minutes, but there had been hours and days of work done on that parole before it ever got to us, including that of our own investigating staff.

MRS. BARUS: Then this board had nothing to do with parole from other types of institutions—from reformatories, let's say, or

from hospitals where a woman is being treated for disease, or—

MR. BATES: Not from hospitals.

MRS. BARUS: This board of three is confined to the adult inmates of the penal institutions, am I right?

MR. BATES: It was, but it isn't.

MRS. BARUS: Oh, it was.

MR. BATES: When I was there it was confined to the seven penal institutions, plus the Elmira Reformatory. The year that I left they added four more institutions: the training school at Cocksackie, the Napanoch institution, one at Albion and one at Woodbourne, so that they now have wider discretion; but they do not have the children's institutions. They do not have institutions in New York that would correspond to Jamesburg and the Trenton State Home for Girls.

CHAIRMAN: Commissioner, I want to get it clear—your recommendation to this Committee is concerning only what should be in the Constitution, and I'm just trying to boil it down to see if I understand what you have just said. There should be no mention, in your opinion, in this Constitution about parole—that should all be done by the Legislature?

MR. BATES: That's correct.

CHAIRMAN: And you feel that there's no need for any of the wording whatsoever that appeared in the proposed 1944 revision?

MR. BATES: I think that has only resulted in impeding the development of an integrated parole system in the State. That's why I recommend that that be taken out.

CHAIRMAN: And you recommend that the only thing that needs to be said in the Constitution is to grant the Governor the power of pardon, and you would do that by means of revising paragraph 10, as you just suggested? I want your thought on it.

MR. BATES: That's the way it appears to me.

CHAIRMAN: And leave out paragraph 9 entirely?

MR. BATES: Yes, sir.

CHAIRMAN: Because 9 is really a sort of modification of 10.

MR. BATES: I'm not sure whether you plan to use the Constitution, the amended Constitution, for certain declaratory statements about good administration. If you do, I think it would be quite proper to say that the Governor shall provide for an integrated parole system, or some very brief statement. But I'm talking only about what I think is necessary to clear the way for some such move as has been made in other states. We looked up some of the other state constitutions and found that parole was mentioned only in the Oklahoma constitution—but just about everything is mentioned in the Oklahoma constitution anyway.

MR. SPENCER MILLER, JR.: Mr. Chairman, you've just

been asking Commissioner Bates about what the Constitution should not have in it. I am wondering whether Commissioner Bates wouldn't agree that one of the things that the Constitution should not have in it is the appointment of the Principal Keeper as a constitutional officer. You may already have had occasion to refer to that, Mr. Bates, before my late arrival this afternoon; but it has always seemed to me that the very presence of that provision in the Constitution has not only set up a dualism in administration but represents a survival of a much earlier past when the State Prison virtually represented the only custodial institution you had in the State. I'm wondering, in taking out sections, whether you would not strongly recommend, if you have not already suggested it, that the post of Principal Keeper be stricken from the Constitution as one of the constitutional officers.

MR. BATES: Well, I think the question about answers itself.

(Laughter)

Mr. Chairman, I would certainly agree. I don't think there's any more reason for having the Keeper of the State Prison in the Constitution than the Superintendent of Annandale, or the Superintendent of Rahway, or any of the rest of them; and I do think that Commissioner Miller is right in saying that at the time that was included in the Constitution there was no other way he could be appointed. There was no supervisory department. There was no board. The Governor was the logical person to appoint him. And I agree that the later developments in institutional history in the State are a little bit hampered by that provision.

MR. MILLER: Would it not also be a way in which we could reduce the number of appointments the Governor is called upon to make? He has a good many appointments under the present Constitution, and undoubtedly under the new Constitution he will have a certain number of appointments. By every act that we can reduce the number of appointments that he has to make of that kind, he is going to be freed for other administrative responsibilities.

There is one other question I would like to pursue, Mr. Chairman, with reference to the suggestion Commissioner Bates has just made about some declaratory sentence with reference to parole. I shall not review all that he has said so very lucidly about the distinctions between the parole function and the function of executive clemency or the pardoning power on the part of the Governor. But it would seem to me that it would be a most appropriate recognition of the fact that even penology has changed in a hundred years, and very considerably changed, to have some statement put in the new Constitution that it was a part of the function of the Governor to designate or to create some instrumentality for carrying on, at a professional level, this very important function of

parole. I quite agree with what has seemed to be the consensus of the discussions this afternoon, that that could be done by legislation, *i. e.*, filling out the outlines of the parole function; but what, it seems to me, you have just suggested to the Committee is the possibility of having a declaratory statement made in the Constitution vesting the power and the right of appointing a parole board or some appropriate agency for carrying out this parole function. I take it, Commissioner, that that is your feeling—that such an affirmative and declaratory statement might make a kind of clean break with the past and have us looking forward instead of backward.

MR. BATES: I don't know that I want to be dogmatic in answer to that, Commissioner. I think that depends upon the policy of the Convention, which might be more general than the particular aspect you and I are talking about.

I am very anxious, of course, as we all are, to see parole recognized. When the President a few years ago said that parole is now established as the most efficient method of releasing men from prison, I think we marked a milestone. Now, if that's what you are going to put in the Constitution, we would like to have it there; but I wouldn't advocate it, because I have no lack of confidence in the Legislature that when the opportunity is presented they will not arrange for a suitable system.

I think it is a matter of policy, looking a long time ahead, for this Committee and this Convention to decide. I think we would all be pleased to see recognition given to parole if recognition is given to any other particular state activity. If it isn't, all we're asking is to have the obstacles removed so that the Legislature can go to work.

MR. FARLEY: Commissioner, our present Constitution permits the Governor to grant a 90-day reprieve to someone who is awaiting execution under a death penalty for committing murder. What have you to say as to this limitation of time granted the Governor?

MR. BATES: What section is that, do you recall?

MRS. BARUS: Article V, paragraph 9. The question was: Should there be a time limit on the length of reprieve that the Governor can grant? Is that correct?

MR. BATES: That's right. It seems to have more of a historic than a prophetic significance.

MR. FARLEY: You appreciate that under our court procedure that by the time the defendant has perfected his appeal, the average time consumed usually exceeds 90 days. Would you suggest elimination of any limitation of time, or do you have any thoughts otherwise?

MR. BATES: I don't think there should be any limitation such as that in the Constitution.

MR. FARLEY: Thank you, Commissioner.

CHAIRMAN: Does anybody else of the Committee have any questions to ask the Commissioner?

MEMBER: Excuse me just a minute . . . Commissioner, have you anything else to say to us, or would either one of the gentlemen who came with you like to say anything to us?

MR. BATES: Well, we brought about a bushel of statistics here, but we can carry them back with us. They all go to prove that parole is a good thing and that parole properly administered reduces the crime rate. If you want to take my word for that, I guess we can call it a day.

(Laughter)

CHAIRMAN: All right, Senator Farley, your motion.

MR. FARLEY: I move that we thank Commissioner Bates and his colleagues for his personal appearance before this Committee. We are very grateful.

(Motion seconded and passed unanimously)

CHAIRMAN: Thank you very much, gentlemen, and thank you, Commissioner. You have been very helpful.

There were several very interesting letters addressed to me that I would like to have the Secretary read to the Committee. There are some very pertinent points which particularly should be made part of the record.

MRS. BARUS: I might as well begin by saying that this is from Brigadier General S. A. Barlow, the Quartermaster-General, and is addressed to the Hon. David Van Alstyne, Chairman *(reading)*:

"My dear Senator:

I am tremendously sorry that because of the fact that I had a series of appointments on official business in New York, I was unable to be reached in time to appear before your Committee on Wednesday. It is my considered judgment, after nearly 35 years spent in the state service, that the provisions of Article VII, Appointing Power and Tenure of Office, Section I, Militia Officers, contained in the present Constitution of the State of New Jersey would be entirely satisfactory and essential if included in the proposed new Constitution, eliminating, however, those paragraphs which provide for the election of commissioned and non-commissioned officers.

It is my belief that there is a pressing and continued need for tenure of office for the Commanding General, the Adjutant-General and the Quartermaster-General, particularly because of the greatly increased authorized strength of the New Jersey National Guard and the Naval Militia.

It is my further belief that the State Military Board presided over by the Commanding General of the New Jersey National Guard and composed of the general officers of the National Guard and the senior officers of the Naval Militia, constituting the body which establishes the militia policies of this State, subject to the approval of the Governor, is capable of coordinating all the militia activities of the State. In addition, the present statute which provides for the designation of the Chief of Staff to the

Governor, in his capacity as Commander-in-Chief, furnishes proper liaison between the Executive and Military Departments.

I shall, of course, be pleased to appear before your Committee at its meeting to be held on July 2, 1947 at 11 o'clock in the forenoon.

Kindest regards,

S. H. Barlow"

This letter is from Commissioner Harry C. Harper of the Department of Labor (*reading*):

"My dear Senator and Chairman:

In accordance with the announcement which has appeared in the public press, the Executive Committee, of which you are Chairman, which is considering the Executive Section of the proposed Constitution, will receive comments and suggestions from the public. I desire to file this letter with your Committee and ask that you have it made part of the record of the Constitutional Convention.

My views as stated are based on experience of 20 years of public service as Sheriff of the County of Bergen, the constitutional elective office, ten years as a member of the Civil Service Commission, and over three years as State Commissioner of Labor. During this time I worked with four successive Governors and have come upon many of the problems associated with the Executive Office.

I believe it is in the interest of efficiency and harmonious operation of the State Government for the Governor, as Chief Executive, to be the power to appoint all department heads when he takes office. The terms of the department heads should expire with the term of the Governor or as soon thereafter as they should be replaced by the succeeding Governor. I believe that this principle will enable the Governor to carry out with speed and certainty the program which he has presented to the people and which his election indicates has received their approval.

I believe that the Governor should be made a 'strong Governor' in the sense that he should be given full and complete administrative, executive and investigatory authority over all of the departments of the State Government. I also believe that this should be done without transgressing upon what should be the fundamental right of the legislative power to legislate.

I am very strongly of the belief that the term of the Governor should be made four years, and I believe just as strongly that the Governor should not be allowed to succeed himself. I do not know of any reason why a Governor should desire to succeed himself except for the purpose of self-perpetuation in office. A good Governor would not want to do this. Governor Driscoll has demonstrated that by his statement, that even if the new Constitution permits it he would not succeed himself. If he does not want to do it, why should any other Governor want to? The Governorship of this State is a great honor, the highest that could come to any of its citizens; no man ought to seek it unless he feels that in the occupancy of that office he can make a real contribution to the welfare of the State and to the betterment of his fellow citizens. If he is interested in the opportunity to make that contribution, then he should be satisfied with the privilege of serving one term, and at the end thereof be willing to step aside and permit someone else a like opportunity. The power and prestige of the Governorship ought to be exercised in the interest of the people and not for the purpose of permitting the occupant of the gubernatorial chair to keep himself in office and become a dictator, if he so chooses. Finally, I believe the Governor who has but one term to serve can be entirely independent of the political expediencies and compromises so often necessary to insure his reelection.

I sincerely trust you would give my views serious consideration. Will you also be good enough to make them known to the other members of your Committee and to the Convention as a whole.

With kindest personal regards, I remain,

Respectfully yours,

Harry Harper"

This is to the Hon. David Van Alstyne, Jr. from Mr. Corbin of the firm of Collins and Corbin, Counselors-at-Law, 1 Exchange Place, Jersey City 3, N. J. (*reading*):

"Dear Sir:

I have watched with great interest the controversy over the proposal that the Governor be allowed to succeed himself. As an older and reputedly conservative member of the bar and long-time resident of this State, having been born here, this is a subject I have considered for many years.

I reached the conclusion long ago and still believe that it is decidedly desirable that the Governor be permitted indefinitely to succeed himself in office. It seems unnecessary to argue the point as both sides have been thoroughly covered before your Committee and in the press. I sincerely hope that this reform will be adopted."

MEMBER: I move you, Mr. Chairman, that the letters just read by the Secretary be filed and made part of the record.

CHAIRMAN: Seconded?

MEMBER: Seconded.

CHAIRMAN: Any discussion. . . . All in favor, say "Aye."

(*Chorus of "Ayes"*)

CHAIRMAN: Contrary?

(*Silence*)

CHAIRMAN: So ordered.

How many people will be here tomorrow morning at ten o'clock to continue our working schedule? Will we have a quorum?

(*Eight hands raised*)

CHAIRMAN: We will start in the committee room at 10:00 o'clock.

(*The session ended at 3:30 P.M.*)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, July 2, 1947

(Morning session)

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

PRESENT: Barus, Eggers, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne and Walton.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR: I am sorry that the Executive Committee does not have the sound track device because I would like to have this on the sound track. The stenographer will take it down.

General Barlow and General Powell, thank you very much for coming here to talk to our Committee. We are very anxious to get your point of view with respect to what changes, if any, you feel should be made in the Militia Section of the present Constitution. Which one of you would like to begin?

MR. CLIFFORD R. POWELL: I don't think it makes any difference.

CHAIRMAN: Let's make it by alphabet.

MR. STEPHEN H. BARLOW: I am very happy indeed to be here. As I explained in my letter to you, I don't know whether you would like to put the letter and my remarks—

CHAIRMAN: The letter has already been read and made a part of the minutes of this Committee.

MR. BARLOW: I have nothing to elaborate upon other than what I said in the letter. I think if there are any questions, anything the Committee has in mind, I would be happy to try to answer it. I have a copy of the letter here.

CHAIRMAN: We have it.

MR. FRANK H. EGGERS: General Bowers testified here that the military should be under the Adjutant-General, and that would include the naval militia. Do you agree the naval militia should be separate, with a naval man as head?

MR. BARLOW: As far as the naval militia in the State is concerned, the same set-up for the naval militia prevails as for the National Guard. The senior officer is the officer in command and responsible for the training. The Adjutant-General of the State is the military secretary and takes care of the correspondence and

matters pertaining to administration. He is not administrative head of the naval militia or the National Guard.

MR. EGGERS: Who would dictate the training program?

MR. BARLOW: The senior officer who, at the present time, is Captain Carl McNamara.

MR. EGGERS: You would not agree with the testimony given here by General Bowers that the Adjutant-General should be the Chief of Staff of the naval and military staff of the State?

MR. BARLOW: I do not. I feel the senior officer of the military should be the Chief of Staff, and the senior officer of the naval reserve should be Chief of Staff. I feel that within the State, if you had one Chief of Staff, certainly it would not work out under our present system.

MR. EGGERS: Are you inclined to agree with the bill passed by the Legislature in connection with the Chief of Staff?

MR. BARLOW: I am, and I so informed them.

MR. EGGERS: My questions may sound foolish; I don't know much about the military. General Bowers testified that under the procedure he wanted adopted the Adjutant-General would be in charge of the military and National Guard, and the Quartermaster-General would be supply officer on the staff of the Adjutant-General. How would that relate to the military?

MR. BARLOW: I think it would detract from the efficiency. I don't think there is one officer capable of performing all those duties or even supervising them. As Quartermaster-General I have my hands full with maintenance and supplies, and certainly no other officer would have the qualifications to permit him to exercise complete jurisdiction over it all. It just would not work, particularly in the future with the development of the National Guard to the extent that it will be developed.

MR. GEORGE H. WALTON: How do the naval forces compare in manpower to the National Guard forces?

MR. BARLOW: About one-third. The naval and military forces in this State, when we reach our quota, will be approximately 22,000 and 8,000—between 22,000 to 23,000 National Guard, 8,000 to 10,000 naval reserve.

CHAIRMAN: What do those two figures amount to now?

MR. BARLOW: The strength?

CHAIRMAN: Yes.

MR. BARLOW: I don't know offhand.

MRS. JANE E. BARUS: Did you say the total of about 22,000 would include—

MR. BARLOW: The National Guard aggregate of between 22,000 and 23,000. In addition, you have the naval and military reserve of between 8,000 and 10,000. We will have between 30,000

and 35,000 combined. As Quartermaster-General I am responsible and accountable for all the property issued to the National Guard and naval reserve in this State. Under the quota strength, the value of that property will be approximately \$200,000,000.

MR. EGGERS: Under the set-up proposed by General Bowers the responsibility would vest in one man?

MR. BARLOW: That is correct. I would not care to assume that job. I have to put up a personal bond for \$50,000—a bond with my own personal security.

MRS. BARUS: Isn't this set-up of the Chief of Staff with the G-1, G-2, G-3 and G-4 modeled after the regular army? Isn't General Eisenhower finally responsible for everything in the whole army?

MR. BARLOW: To this extent: he issues the directives to the sub-agencies or subdivisions. He is responsible to the President or the Secretary of War. In our State, with the set-up authorized by the recent act of the Legislature wherein the Governor would select his staff, the Adjutant-General and Quartermaster would be administrative officers under the Chief of Staff. Our set-up would be identical to the federal.

MRS. BARUS: You feel that the Adjutant-General should not be the Chief of Staff?

MR. BARLOW: Yes.

MRS. BARUS: But one of the men sub-divided under the Chief of Staff?

MR. BARLOW: Yes. I do not feel I should be Chief of Staff.

MR. EGGERS: That is in accordance with the federal?

MR. BARLOW: Yes. The set-up would be exactly the same.

MRS. BARUS: What would the Adjutant-General be with respect to G-1, G-2, G-3, G-4?

MR. BARLOW: He would have the office of record, and my section would be maintenance and supplies. The Chief of Staff would be where the commanding general would have the command. Three departmental functions, none overlapping.

MRS. BARUS: The Major-General would be in command of all the forces?

MR. BARLOW: Yes.

CHAIRMAN: May I suggest we ask General Powell to speak to us now?

MR. POWELL: You gentlemen are engaged in revising the Constitution; we are concerned particularly with two portions of it that deal with the militia. Under the section which states that the Governor shall be the Commander-in-Chief, that should quite naturally remain. The other is the seventh or eighth paragraph, the section under the title of "Militia." So far as that section is concerned, I believe that we should eliminate the election of of-

ficers and non-commissioned officers where it appears. That is an archaic procedure. It is now necessary, in view of the federal support, for the National Guard to make sure that all of our officers and non-commissioned officers have the qualifications and abilities that are required by the Federal Government. I think that provision should come out.

One additional brief paragraph, which will give tenure to the officers of the National Guard to the same extent that it is enjoyed by the officers of the regular army, and no more. At the present time, we can only eliminate an officer by court martial. He must commit a crime. Under our Constitution, we cannot eliminate an inefficient officer by an efficiency board. I think, generally, that the tenure for militia officers should be the same as that enjoyed by the officers of the regular army. I think they should have tenure because it has been the experience of the National Guard in those states where there is no tenure that the forces have frequently been disrupted on the election of a new Governor. The men who have worked hard all their lives and sacrificed and made progress in the National Guard have been eliminated by the political change in the administration. I do think the efficient should be protected. We never ask a man what his politics are, whether he is a Democrat or a Prohibitionist. He can have anything, other than Communism, if he is a good soldier and able to fill the job.

Beyond that, I don't see any necessity for any changes in our Constitution. The Adjutant-General has made a proposal here, which proposal, I understand, he also made in 1942, that the Adjutant-General be Major-General. To begin with, that is wrong because the Federal Government has specified the grades of the respective Adjutants-General in the states. Smaller states have Lieutenant-Colonels; the bigger states have Colonels, Brigadier-Generals and Major-Generals. Brigadier-General has been provided for the State of New Jersey. Only the very large states, such as New York, California and Texas, that maintain tremendous National Guards and naval militias are entitled to a Major-General under federal law.

MRS. BARUS: This State would be entitled to a Major-General?

MR. POWELL: Brigadier-General. If we should advance the Adjutant-General to Major-General and create four general officers under him, this State could well become as renowned for its generals as Kentucky is for its colonels. They would have no federal recognition.

MR. WALTON: In fairness to General Bowers, that was carried in the newspapers but he did not testify to it. He asked for officers, not generals. The newspapers carried it as generals.

MR. POWELL: I asked him if he was correctly quoted in the *Newark News*, and he said he was. I do think that all the general

officers that are recognized by the Federal Government should have the same tenure in office that a general officer has in the regular army. I think one additional paragraph should be added, in the Legislature, that each succeeding Governor can choose his Chief of Staff from among the officers of the State. If he likes Barlow, let him take Barlow, or Rose—whoever it may be. I think he should, because of the confidential relationship between the Governor and the Chief of Staff, be permitted to select his own Chief of Staff.

MR. WALTON: Would you apply that only to the Chief of Staff, or would you say it would go to the Adjutant-General, too?

MR. POWELL: I do not think it makes any difference whether it goes to the Adjutant-General. I would prefer to see an Adjutant-General with tenure, the same as our Quartermaster-General, and I would like to have the Adjutant-General's office on the same basis as the Quartermaster. General Barlow is a professional soldier, joined the New Jersey National Guard 35 years ago, and has been a member ever since. He has served in both World Wars, starting as a clerk in the Quartermaster and is now head of the office. He is trained and experienced and has accepted during all that time heavy responsibilities, carrying the responsibility for millions of dollars of property, handling all the accounting for it.

MR. WALTON: Aren't you handicapping a Governor? Isn't it general military practice that members of the staff should serve at the pleasure of the Commander-in-Chief, or the commanding Governor?

MR. POWELL: Not an Adjutant-General. I think the best description you gentlemen had was given by former Governor A. Harry Moore when he said that the Adjutant-General is a military secretary. He is the man who writes the letters and keeps records. The Adjutant-General is not a person who ever has in the United States Army created any policy or been responsible for putting any policy into effect.

MR. WALTON: You don't agree with the second part of former Governor Moore's statement that the Governor should be entitled to have his own military secretary and—

MR. POWELL: No. You would get many changes in individuals. In the past we have had men as Adjutants-General for a number of years, and it ran most smoothly. The longer the man has been there, the better the administration functions have been carried out in this State.

MR. EGGERS: Isn't it possible to create a Chief of Staff and give him sufficient rank to carry out the policies of the Governor?

MR. POWELL: It is. I believe—I don't know what the record says—I do know the newspaper reported the Adjutant-General as having stated that that was the proper way to operate the National

Guard, with the Adjutant-General as Chief of Staff. Having a senior line commander as Chief of Staff never works. If he is correctly quoted, I would like to invite your attention to General George Marshall, who was Chief of Staff and Commander-in-Chief of the Army of the United States and who did a good job in World War II. They have proven the functions of the Adjutant-General in Washington are keeping the books and writing the correspondence.

MR. WALTON: In the set-up that you propose, I take it that you agree with this act passed by the recent session of the Legislature?

MR. POWELL: I do. I feel that the Governor should have the selection of the Chief of Staff, who is to be a man who puts his policies into effect and who insures the proper function of the military forces of the State.

MR. WALTON: It would be quite possible to have in New Jersey a war disaster court, such as Governor Dewey set up in New York State, wouldn't it?

MR. POWELL: Correct. We are getting a bit afield there. I don't see any necessity for a war disaster court. I do see a necessity for planning against that, going down to the smallest municipality in the State.

MR. WALTON: I agree with you.

MR. J. SPENCER SMITH: Were you through with your statement?

(Discussion off the record)

MR. SMITH: On the record, in regard to the phraseology you think ought to go into the Constitution to accomplish your purpose, would it be proper, Mr. Chairman, for these gentlemen to submit the phraseology that would carry out their ideas about integrating our military forces with the federal? I would like to accomplish that in the Constitution.

MR. POWELL: I think two paragraphs under that militia heading would be sufficient: (1) the suggested paragraph in 1944, changing the word "may" to "shall" or "will"; and (2) one more paragraph providing that officers and non-commissioned officers in the National Guard have the same tenure enjoyed by the officers of the regular army and the regular navy. I use the word "military" forces; that is subject to flux. We are about to have a separate air force. I think that is all you need.

MR. SMITH: Would you mind submitting that in actual phraseology?

MR. POWELL: I would prefer to have 24 or 48 hours.

MRS. BARUS: In what way, then, is New Jersey queer in military thinking? We have the present three officers with equal rank.

MR. BARLOW: No, they are not of equal rank. The commanding general, General Powell, is a Major-General; the Adjutant-General is a Brigadier-General, and I am a Brigadier-General, but our seniority depends on the dates of our commissions. I am senior to General Bowers; he is the junior of the three.

MRS. BARUS: What you are advocating is a fourth officer?

MR. BARLOW: No. In addition to his other duties, this officer would perform the duties of Chief of Staff.

MR. POWELL: We have currently in the State four general officers: General Rose, who commands the Combat Corps in the New Jersey National Guard; General Bowers, General Barlow, and myself. I am a senior officer, a Major-General; the other three are Brigadier-Generals, and their seniority is determined by the length of service in that particular grade. We are entitled to one additional general officer in the State, and that appointment will probably be made in the comparatively near future. We are entitled to another combat command commander. There will be a total of five general officers. There will be, when the naval militia reaches a certain strength, we hope, an office of Flag Raiser or Adjutant, which is comparable to a general in the National Guard. Any incoming Governor should select from them the man whom he wants to be Chief of Staff, and that man will so function in addition to his other duties. It does not create a new job.

MRS. BARUS: It might be one of the three. He would have to be Chief of Staff and also perform his other duties?

MR. POWELL: Yes.

MRS. BARUS: Wouldn't that be out of line with the regular army?

MR. POWELL: No. When we organized for World War I, General Drum commanded the First Army. He commanded the military district; then he commanded the corps area. He had a separate staff. The functions so intertwined with the other, it was quite proper they should be pooled together by one man. That is not true in New Jersey. We have not pooled this situation together. In spite of the fact that the Adjutant-General has been designated as Chief of Staff, no Adjutant-General has taken the bull by the horns and organized a military department of the State of New Jersey as it should be and pulled it together.

MRS. BARUS: Isn't it different? You have this General Drum in these three levels, but it was the same type of command. Wouldn't it be queer if he were Chief of Staff in a larger section and then try to be Quartermaster?

MR. POWELL: General Johnson, who was Chief of Staff, reached those three levels. In the Twelfth Army, General Bradley

commanded the Twelfth Army and also the First U. S. Army, which was a part of it.

MRS. BARUS: But if he tried to do a different kind of job—

MR. WALTON: What she means is, it would be unusual to have the G-4 also Chief of Staff.

MR. BARLOW: If I were G-4, I would ask the Governor not to appoint me. I would feel that my functions were such that I should not exercise the command of Chief of Staff. I think they should take the general officers from the line.

MRS. BARUS: You would be acting as your own boss. Who would be supervising the Quartermaster?

MR. POWELL: I would not restrict the Governor to a general officer in line. I would say a senior officer in the National Guard. If he wanted to choose a Colonel and give him a temporary grade of Major-General—he should have elbow room to select the man.

MR. WALTON: Isn't it true that the set-up in the last few years has resulted in the provision, by legislative enactment, that the Adjutant-General should be Chief of Staff, and that the situation should be corrected to a large extent, now that that has been changed?

MR. POWELL: The Governor has it in his hands, if he wants to exercise it.

MR. LEWIS G. HANSEN: What percentage of the overhead cost of the National Guard does the Federal Government now assume?

MR. BARLOW: 75 per cent in maintenance, 100 per cent in equipment and training. The State of New Jersey pays nothing as far as training, armory or field training, is concerned, and nothing for equipment or repairs to that equipment.

MR. HANSEN: Isn't that a very good reason why we should conform with the federal set-up?

MR. BARLOW: I think so.

CHAIRMAN: I would be concerned with what wording goes in the Constitution concerning the military, and not too much as to how the military is set up. General Powell, you answered Mr. Smith's questions to bring out the point. Do you suggest that the wording in the new Constitution be the 1944 revision paragraph plus one extra paragraph which would concern tenure for officers and non-commissioned officers the same as now exists for the regular army, navy and air force of the United States?

MR. POWELL: That is correct.

MR. BARLOW: I feel the same way.

MR. POWELL: Under the present Constitution, they can't get rid of them unless they commit a crime. It would be a great pity if some kid from New Brunswick who enlisted in a company,

worked his way up to company commander, fought in a World War, came back and took his job over again, and then, just about the time there was to be a vacancy for battalion commander, somebody would say, "Here, John Jones in Bound Brook is a friend of mine; we will give him that battalion." Unless there is some tenure provision in this Constitution, that may happen in the future. It could not have happened under any Legislatures heretofore, because the legislators have been reasonable and competent men who haven't viewed the National Guard from a political point of view.

CHAIRMAN: If you accept what you said, then you don't need the second paragraph, only the first: "The Legislature shall 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." There is nothing in here about tenure or civil service. There are thousands and thousands of people who have tenure in this State.

MR. POWELL: For the Legislatures we have had, that is fine. We know that with the same type of political thinking we have in the Legislature, we will be all right. Suppose there is a change in the political set-up. They could wipe them out.

CHAIRMAN: That is true of civil service. The Legislature could wipe out tenure for 16,000 people in the State.

MR. EGGERS: General Powell, do you believe that by inserting a clause in the Constitution providing for tenure for officers in the National Guard you will be able to have a more efficient organization in the event of an emergency?

MR. POWELL: There is no doubt about it. These fellows have some protection in their jobs, and they know some civilian will not be brought in from the outside and given their jobs. Quite naturally we would be given a better organization.

MR. EGGERS: In view of the fact that this is not an ordinary civil office and concerns the welfare of the State, I move that General Powell be requested to draw up a section relating to the military as he proposes, and submit it to this Committee to be compared with the 1944 section for adoption by the Committee.

MR. SMITH: I second the motion.

CHAIRMAN: Any discussion? . . . All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

MRS. BARUS: What is the tenure of a man in the regular army?

MR. POWELL: He has tenure on his job as long as he main-

tain a certain state of health, as long as he satisfactorily performs his duties, and as long as he behaves himself and does not commit a crime. Under the existing Constitution we can only get rid of him if he commits a crime. He can break a leg or be grossly inefficient and we cannot get rid of him.

MRS. BARUS: They do have some inefficient officers in the army from time to time.

MR. POWELL: Yes. I think a National Guard officer should be eliminated when he reaches the age limit set by the army—60 for a Colonel, 62 for a Brigadier-General, 64 for a Major-General. I have no personal interest in this tenure. I don't propose to remain much longer.

MR. BARLOW: That would be part of the tenure, considering the age.

MR. EGGERS: Isn't it a fact that with the rating and efficiency boards set up, there is less chance of having an inefficient officer than in our set-up?

MR. POWELL: Yes, that is correct. Every officer in the National Guard undergoes a very considerable examination. He undergoes a severe physical examination prescribed by the War Department. Also, his record in World War II is very carefully examined. If outstanding, he gets no further examination. Any doubt would bring about a thorough examination by a board composed of two regular army officers and one National Guard officer—a very thorough examination as to his military efficiency. The Adjutant-General has no federal recognition.

MRS. BARUS: What is federal recognition? He is the person to whom all communications come.

MR. POWELL: It is in the set-up of the National Guard that the State can designate somebody to be Adjutant-General, whether he is pleasing at all or not.

MRS. BARUS: Without federal recognition?

MR. POWELL: Yes.

MRS. BARUS: Is that because you think he is generally the Chief of Staff?

MR. POWELL: No.

MRS. BARUS: Just because he is secretary?

MR. POWELL: Yes.

CHAIRMAN: Any other questions? Any further observations, Generals, that you would like to make to us?

MR. POWELL: I want to apologize for not being present at your other meeting. I live "in the sticks," at the shore. The Colonel tried to get in touch with me.

MR. EGGERS: Would you give us an approximation of the

amount of federal equipment turned over to the New Jersey National Guard?

MR. BARLOW: At the present time it is about \$10,000,000 worth.

MR. EGGERS: That is for training purposes?

MR. BARLOW: Yes. That is only just a small bite. Every day we are getting thousands and thousands of dollars worth.

MR. POWELL: I would say five per cent of the equipment the Federal Government will send in.

MR. SMITH: I move a vote of thanks to Generals Powell and Barlow.

(Seconded)

MR. FRANK S. FARLEY: Isn't it the plan of the Federal Government to intensify the activity of the National Guard more so now than ever before?

MR. POWELL: I think that is true every year in the history of the National Guard. The Federal Government, from the passage of the National Defense Act of 1916, has paid more and more attention every year. After World War I it was intensified; it was equally intensified after World War II.

MR. FARLEY: Isn't that by virtue of the unsettled conditions of the world today?

MR. POWELL: You will have to ask the State Department that.

MR. FARLEY: Isn't there a greater intensification of the National Guard than ever before?

MR. POWELL: Speaking as an individual, I believe there is.

CHAIRMAN: All in favor of the motion, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Thank you very much for coming.

(Recess for executive session of the Committee at 11:35 A.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 8, 1947

(Morning session)

(The session began at 10 A.M.)

PRESENT: Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: We have now set up a Soundscriber and would like to request that everybody put the transmitter on the lapel of his coat. You won't have to bother by holding it in your hand. I think the first thing to do is to take a look at the minutes.

MRS. JANE E. BARUS: Would you like me to read them?

CHAIRMAN: Yes, I think these are very important minutes.

MRS. BARUS: *(reading)*:

"A meeting of the Committee on the Executive was held at 10:00 A.M., July 2, 1947. Present: Van Alstyne, Eggers, Hansen, Miller, Walton, Smith, Barus.

WALTON moved to eliminate paragraphs 2, 3, 4 and 5 from Section III of Article IV, of the 1944 draft, relating to the powers of the Governor to reallocate departmental functions by executive order. Motion seconded and carried.

MILLER moved to incorporate the sense of the sentence in the 'Model Constitution,' page 11, section 507: 'In such manner as will tend to maintain an orderly arrangement, etc.' Motion seconded and carried.

At this point Commissioner Miller left the meeting.

EGGERS moved the inclusion of the last sentence in the same paragraph of the 'Model Constitution'; 'The Legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise.' Motion seconded and carried.

WALTON moved to adopt paragraph 6, Section III, Article IV of the 1944 draft, relative to the principal departments and single executives. Motion seconded.

Discussion:

VAN ALSTYNE made a statement on the Department of Institutions and Agencies, its outstanding success and reputation throughout the country. This department and the Department of Agriculture might be made special exceptions to the rule of single executive heads.

WALTON called attention to the fact that the Department of Agriculture is entirely outside the control of the people.

SMITH feels that the present system is a very democratic one.

WALTON stated that it was not truly democratic, because it was controlled by a private special group.

BARUS: There has been a tendency in this State to remove certain important departments from political control, on the ground that politics

are crooked. This makes the false assumption that political machinations take place only in governmental bodies. The way to get good government is to keep all functions under the control of political officials responsible to the people.

EGGERS: No important function should be removed from control by the people.

HANSEN: If the Committee yields to these two departments, many others will press for similar exceptions.

SMITH: The present system has worked well from a practical point of view.

At this point Quartermaster-General Barlow and Major-General Powell arrived. They were welcomed by the Chairman who stated that General Barlow's letter had been read into the record of the hearing of July 1.

General Barlow and General Powell advocated the elimination of the election of officers; tenure for militia officers, similar to that of the regular army; and a Chief-of-Staff appointed by the Governor from among the senior militia officers, to serve at his pleasure. They suggested including two paragraphs on the militia in the Constitution, one as in Section VII, Article III of the 1944 draft, and one other paragraph to provide tenure for officers.

After discussion and questions, EGGERS moved that General Powell be requested to draw up suggested provisions for the Constitution to incorporate these ideas. Motion seconded and carried.

The Chairman thanked General Barlow and General Powell for their assistance.

The business session resumed.

WALTON presented to the Committee copies of a tentative provision on the militia, drawn up by him with the assistance of Mr. William Miller.

It was moved, seconded and carried to defer decision on this draft until General Powell's proposal had been received.

The Committee then returned to a discussion of the Governor's appointive powers and the executive departments.

Mr. William Miller read a memo on the provisions of the New York State 1938 Constitution relative to this Article.

There was a discussion of the phrase 'Unless otherwise provided by law,' in paragraph 6 of Section III.¹

BARUS stated that unless the Legislative Committee is planning to recommend a prohibition of the Legislature's power to make any executive appointments by election, this phrase would open the door to a breakdown of the principle of executive appointment.

EGGERS moved the approval of paragraphs 6 and 7, Section III, Article IV, 1944 draft, with the addition to paragraph 7 of a provision giving the Governor a strong removal power. Motion seconded and carried.

Committee adjourned for lunch.

Afternoon session:

Present: Van Alstyne, Feller, Eggers, Farley, Hansen, Miller, Smith, Walton, Barus.

WALTON moved to approve paragraph 8 of Section III¹ relative to the Governor's Cabinet. Motion seconded and carried.

HANSEN moved that Section II, paragraph 2, Article VII of the old Constitution relative to the election of the Treasurer and Comptroller be referred to the Legislative Committee. Motion seconded and carried.

In paragraph 3, Section II, Article VII, old Constitution, MILLER moved to delete the 'Keeper of the State Prison.' Motion was seconded and carried.

EGGERS moved to delete the 'Attorney General.' Motion seconded. After discussion of the effect of naming officers in the Constitution and the fact that to give them a term of office in the Constitution would make them removable only by impeachment, the motion was carried.

FARLEY moved that 'Prosecutors of the Pleas' be retained as in para-

¹ Draft Constitution of 1944, Article IV.

graph 2, Section II, Article VI (1944). Motion seconded.

EGGERS moved to amend by providing that a removal shall be provided by law. Amendment carried. Motion carried as amended.

MILLER moved that the title be changed to 'County Prosecutor.' Motion seconded. Motion carried five to three.

WALTON moved to delete the 'Secretary of State.' Motion seconded and carried.

EGGERS moved the adoption of paragraph 3, Section II, Article VI (1944) on sheriffs and coroners, with a four-year term for sheriffs and coroners.

FARLEY moved to adopt paragraph 5, Section I, Article VI (1944). Motion seconded and carried.

MILLER moved to adopt paragraph 1, Section I, Article VI, relative to oath of office. Motion seconded and carried.

HANSEN moved to eliminate paragraph 2 on civil service. Motion seconded. Motion withdrawn.

MILLER moved that the Technician prepare a draft on the merit system for the consideration of the Committee which would not make civil service mandatory on municipalities, without including any reference to veterans' preference. Motion seconded and carried.

EGGERS moved that the Technician be directed to draw a clause on veterans' preference, using the word 'may' instead of 'shall.' Seconded and carried after considerable discussion, with two dissenting votes.

MILLER moved to approve Article VI, Section I, paragraph 3 (1944) on fees received in office. Motion seconded and carried.

WALTON moved to approve paragraph 4, on giving bond. Motion seconded and carried.

The Committee received a proposal from delegate Robert Carey, calling for a four-year term for Governor without power to succeed himself. Meeting adjourned."

CHAIRMAN: I move that the minutes be adopted as read.

MR. LEWIS G. HANSEN: Second the motion.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: It is so ordered.

I would like to distribute Governor Edge's brief which he said he would give to us.¹ I hope you have enough. Is there one for every member of the Committee? I would like to suggest that we do not take time to read this as a Committee but to read it individually, and possibly later on in the morning or during the recess for lunch you will have time to read it and we'll take it up this afternoon.

MR. SPENCER MILLER, JR.: May I ask that we consider the matter of succession?

CHAIRMAN: I was hoping we could take the matter of succession up this afternoon. Before going any further, I would like to read a very interesting letter received from Bill Allen, Secretary of the Department of Agriculture, which is very pertinent to one of the matters we discussed at our last session. *(Reading):*

"Dear Senator Van Alstyne:

I want to take this first opportunity upon returning to the office to express my appreciation to the members of the Executive Committee, and

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

particularly to yourself as Chairman, for the courtesies extended to the farm organizations' representatives who presented a brief in the interest of continuing the present type of organization for the Department of Agriculture, which has been in operation since 1916.

In your conversation with me, you expressed the thought that the proposed Revision of 1944 would have protected our present set-up and assured continuation of the State Board of Agriculture as the controlling body of the Department. As I study the 1944 proposal, I concur with you except that certain interpretations might fail to recognize the convention idea for submitting nominations to the Governor, which would be regrettable for several reasons.

The convention idea has made it possible to carefully select the type of persons to be appointed to the Board, especially from the standpoint of representation of all sections of the State as well as being representative of the important agricultural enterprises that make up the agricultural industry of the State.

If the State Government is to have only 20 departments, our farmers are bound to be somewhat concerned unless the convention idea is continued, because of the possibility of including in the Department of Agriculture such agencies as the one regulating the price structure of milk and the agency supposedly established for improving the breeding of horses. Many of our farmers would be of the opinion that, with such agencies included in the Department, if the convention idea were not continued, other influences than the best interest of agriculture might affect the type of board members who would have the responsibility of administering the Department of Agriculture. On the other hand, if the Governor of the State and also the Legislature will recognize the present law relative to appointment of board members, I am sure that the 1944 proposal would amply cover the situation.

As you probably realize, our farm people do not favor changes, especially where the present method seems to work so satisfactorily. I have a feeling that if your Committee could recommend to the delegates of the Convention the 1944 proposal as it relates to boards, with a statement to the effect that it would safeguard the present law affecting board membership for the Department, it would do much towards winning the confidence of the rural people to the revision which is about to be written by your Convention now in session.

Again I want to thank you and the members of your Committee for your courtesy to the representatives of our farm organizations who appeared before you yesterday.

Sincerely yours,

Bill."

I think that letter was so pertinent to something we discussed that I felt I ought to read it to you. I don't think we need comment any further on it until we come again to review the subject matter of the discussion. Has anybody else anything before we go to the actual meeting?

MR. GEORGE H. WALTON: Mr. Chairman, that represents a change from the brief sent us.

MRS. BARUS: No.

CHAIRMAN: The Governor?

MR. WALTON: No, the former man.

MRS. BARUS: I would like to ask Mr. Miller if they are not mistaken in thinking the 1944 draft as adopted would permit continuance of the present system?

MR. WILLIAM MILLER: The 1944 draft probably would have

permitted the concurrence of the Governor and debate on the appointment of a commission under the nominating system. That is the way the 1944 draft read—where a board or commission makes an appointment, you need the approval of the Governor.

MRS. BARUS: However, all members of the board must be appointed by the Governor, and technically they are appointed by the Governor, aren't they?

MR. WILLIAM MILLER: It might be a question because a constituent agency might elect, and various horticultural and agricultural groups do interpose between the power of the Governor to appoint and the nominating process.

CHAIRMAN: There is nothing legal to prevent the thing taking place. Are there any other questions on that point? If not, I would like to ask you to take up some of the few matters we haven't discussed yet. Let's take up the matter of parole.

Excuse me, Mrs. Bebout, did you want to appear before us? Mrs. Edwin Bebout, representing the League of Women Voters.

MRS. EDWIN BEBOUT: We recommend the following proposal on the subject of civil service. The wording to follow is from the "Model Constitution" prepared by the Committee of State Government of the National Municipal League:

"In the civil service of the State and all its civil divisions, all officers and positions shall be classified according to duties and responsibilities. Salary ranges shall be established for the various classes and all appointments and promotions 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."

We would like to see this clause written into the Constitution because we believe thoroughly in qualified personnel under a superior merit system. We would also be glad to see written into this clause, or into a general home rule clause, a guarantee of the right of counties and municipalities to set up their own civil service administrations so long as they adhere to the principles set forth in the Constitution—something like the above paragraph. That has been a question in the League of Women Voters itself, very decidedly. A good number of the members realized that their communities do not want to go under our state civil service laws, so they want it to be clear that while they are required to set up a civil service procedure in their home towns, they shall conform to the constitutional provisions here, though they do not have to go under our present state civil service law.

We also believe that if the State Government is reorganized as has been proposed here, and according to League proposals, with the executive departments headed by appointees of the Governor, and if the civil service becomes, as we would expect, one of those departments, we believe that the state civil service would be so

improved that probably those objections coming under it would be gradually removed and it would be a progressively better and more satisfactory state system.

In the League, of course, we do not think this should go into the Constitution, but it is our belief that a State Civil Service Department should have an advisory board of distinguished citizens to serve in a general policy-making capacity and to give that continuous citizen attention to the problems of the department which is necessary to make a democratic government work. In other words, to serve in a watchdog capacity and to complete investigations where that is necessary. We believe that administration should be left entirely to the commissioner and his technical staff and they should have complete responsibility for the result, subject to the scrutiny of the board, and through them to the public.

Civil service provisions are included in the constitutions of New York, Colorado, Ohio, California, Michigan, Louisiana and Georgia, and we hope very strongly that your Committee will press this recommendation because we believe such a recommendation would strengthen the governmental procedures of the State and would make state service truly a career service.

CHAIRMAN: Any questions to ask Mrs. Bebout? As I recall, at the last session of our Committee we went over this particular section and we requested that our technician, Mr. Miller, draw up a paragraph on the subject of civil service which would specifically include the merit system. I believe that was the way it was phrased, and we hoped to have our final wording ready certainly before the end of this week and send it around so that you could see it. Are there any other questions?

MRS. BARUS: I would like to make a statement. That provision, as we asked Mr. Miller to draw it, wasn't mandatory, and this proposal would be mandatory. In other words, it would require each town to have either an acceptable merit system of its own, or go under the state system. There is much difference there.

CHAIRMAN: That's true. It would have to be motivated by the merit system.

MRS. BARUS: So that their promotions couldn't be motivated simply by political considerations or just frivolous departures from a system.

CHAIRMAN: Thank you very much, Mrs. Bebout. I am sorry you had to chase around from Committee to Committee.

Will you now turn to the parole section? Bill Miller, where is the parole section in the old Constitution? Page 20 of the booklet. In the yellow book?¹

¹ The reference is to the publication prepared by the Law Revision and Bill Drafting Commission in which the 1844 Constitution and the proposed revised Constitution of 1944 were arranged for comparison.

MR. WILLIAM MILLER: Page 42 would be best. In the 1844 Constitution itself, Article V, paragraph 9; and then there is also paragraph 10 which sets up the so-called Court of Pardons. Paragraphs 9 and 10 in the old Constitution. Both are dealt with on page 42.

CHAIRMAN: To refresh your memory somewhat, when we heard Sanford Bates he definitely wanted to make a distinction between the power to pardon and the power to parole. He felt there ought to be a clause in the Constitution to give the Governor the power to pardon. He saw no reason why there should be any mention of the parole system in the Constitution, for in a sense it is perfectly well taken care of by law and—again I am just reviewing what he said—he felt that paragraph 10 of the old Constitution should be eliminated and that paragraph 9 should be changed to read: “The Governor, or person administering the government, shall have the power to suspend the collection. . . .” No, that’s not right. Paragraph 10: “The Governor, or person administering the government, may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment.”

MR. J. SPENCER SMITH: I move we eliminate paragraph 9.

MR. FRANK S. FARLEY: Second the motion.

CHAIRMAN: Seconded.

MR. WILLIAM MILLER: With respect to that motion, I think there is one case in New Jersey which holds that the reprieve power doesn’t come within the pardoning power. Probably, let’s specifically say reprieves in addition to the pardoning power.

CHAIRMAN: Would you be willing to change your motion?

MR. SMITH: Yes. Jack Farrell told me that years ago.

MR. WILLIAM MILLER: Pardon is mentioned under the Right of Suffrage Article, page 7.

CHAIRMAN: Page 7 of the old Constitution.

MR. WILLIAM MILLER: It has to do with some of this. That’s the only other place in the Constitution where the pardoning power is mentioned. I don’t know that there is any restriction as to perjury; that may have been by legislative action.

MR. FARLEY: Someone suggested taking the reprieve clause out of this particular section. I think it was the consensus of opinion the power should be unlimited; at least, the opinion of Mr. Bates and other people was along that line. I make a suggestion that if you do use the word “reprieve” that you use “unrestricted” or “unlimited.” The Commissioner thought no limitation should be placed on the Governor.

MR. WALTON: I am not exactly against Mr. Smith’s motion, but I do want to point out that you are putting a terrific burden

on an already overworked Governor, particularly if he is a conscientious type, in expecting him personally to pass on all these pardons, which is about what it amounts to the way it is being set up here. I don't mean I am necessarily against the motion, but I do have a great doubt as to whether it is fair to put that burden on the Governor.

CHAIRMAN: Speaking on that point, George, I would like to ask a question of law. Would it be possible for the Governor to turn over this power, if it was given to him, to a parole board which would be created by law?

MR. HANSEN: Didn't we decide tentatively that the Governor would have the right to deputize somebody?

MRS. BARUS: Mr. Chairman, I think that was in the discussion of possible administrative assistants.

MR. HANSEN: Mr. Chairman, there is nothing to prevent legislative action to permit some person or persons to work up something on that. The Governor can't delegate his authority as far as a pardon is concerned.

MR. WILLIAM MILLER: He can't delegate his power to reprieve. The power to reprieve is very closely associated with the power to pardon. I think the chief function to grant pardons carries the responsibility to grant reprieves, and I think you will find it a pretty general practice that even though he may delegate the responsibility, ultimately the responsibility vests in the Governor, in law.

MR. SPENCER MILLER, JR.: I think it is uniform throughout the United States that only the Governor can delegate the power.

MR. HANSEN: That's true where the Constitution permits such practice.

MR. FRANK H. EGGERS: Would Mr. Miller give us an idea of what the New York Constitution says on the Governor's pardoning power.

MR. SPENCER MILLER, JR.: There are two Millers fortified with the New York Constitution.

MR. WILLIAM MILLER: Paragraph 4, of Article IV, New York Constitution of 1938, says (*reading*):

"The Governor shall have the power to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. . . ."

and then the section goes on to refer to treason, if you want me to read any further.

MR. HANSEN: I think, Mr. Chairman, that covers the point we are discussing, subject to regulation by law.

MR. WILLIAM MILLER: Subject to regulation by law as to the manner of presentation.

MR. HANSEN: That would permit the Governor to delegate part of the preparation.

MR. WILLIAM MILLER: No doubt he does. I happen to know that is a fact, that he does delegate to the Pardons Committee. May I say that the present burden, which I checked in anticipation of this question, is as follows: There were 475 applications this year for so-called "pardons." But they were not all applications for pardons as we think of them; only 73 of them were applications for real pardons, so-called full pardons; all the rest were what really amount to paroles.

As Commissioner Bates pointed out, a parole may be granted conditionally by the Court of Pardons prior to the expiration of the minimum sentence. In those cases the procedure is for the institution, the prosecuting attorney and the judge all to make recommendations on the parole. But if you were to provide that paroles shall be granted as may be provided by law, then you would foreclose the present interpretation of the Constitution: that a partial pardon may be granted by the Governor—conditional pardons, that is—in which the actual act is not called a pardon at all but a license to be at liberty, a very nice distinction required by the nature of the Pardons Act. The particular offender is required to report to the parole officers while he is on license to be at liberty, with the result that it would segregate this license to be at liberty from the exercise of executive clemency in the form of full pardons.

The pardoning problem is not a very urgent one but the need is to cut down the amount of work that the Governor must do if he is to exercise his power. It would be necessary merely to provide that paroles shall be granted as may be provided by law. Then all of this license to be at liberty could be handled as a parole matter, if the Legislature passes the proper legislation.

MR. SMITH: I agree with Colonel Walton's idea. If he were to select a pardoning board consisting of the Governor, the Chief Justice, and the Attorney-General, there would be three who would assume the burden. The point is that it puts a terrific strain on the Governor, whereas if by law there were three, it would relieve that strain. I don't know whether it would be proper to put that in the Constitution or not, but it is in my mind. One of the reasons I have it in mind is basically because the Court of Pardons—I don't know if it's worded that way—took the strain off the Governor. So, if you think it would be proper to provide in the Constitution for a board consisting of the Governor and Chief Justice and Attorney-General, then you take that strain off him in deciding

whether a man should live or not and whether or not the evidence justifies his being pardoned.

MRS. BARUS: As a matter of fact, wouldn't any Governor who was in power seek expert advice? He would have a clerk or someone who was more familiar with such work look up the facts for him, and he would also seek the advice of the Attorney-General, if he had confidence in him. I don't think we need to put that into the Constitution, but the Governor with power can't escape all that power. If you are going to have a strong Executive, he must meet those responsibilities.

MR. WALTON: May I ask you a question, Mrs. Barus? It wasn't a question of additional burden on the Governor. The thought in my mind was that no one would be able to say that the Governor is the one who decided the matter. There are three men and no one would know how they voted or anything of that sort. It wasn't because the Governor wouldn't be fair with them. I am sure he would, but in the eyes of the public he's the one who does the trick. It isn't a question that the Governor won't get advice on all that he considers important. He's the one they put the spotlight on. In the public's mind, they will feel every opportunity was given; and if three men feel the prisoner should be pardoned, he should be pardoned; and if they think he shouldn't, then he shouldn't.

MR. CHARLES K. BARTON: Mr. Chairman, I recall that when Commissioner Bates was giving his advice and the benefit of his experience, I asked him a question as to whether or not he thought that a parole board of three appointed by the Governor would not take away this detail from the Governor and from the hands of competent authority. That was the idea. I have no information, of course, such as Mr. Smith has, but I still believe that the Governor being, of course, *ex-officio*, should be given those rights under the Constitution; and further, in my opinion, there should be a parole board operating or appointed by him with the advice and consent of the Senate, as in other cases. Now, could we give the Governor the right to appoint a parole board? As Commissioner Bates said at the time, if that were done at all, the appointees should be men and women of experience with the institutions, because they had that now. Could we give the Governor that power and have such a board, and at the same time have the Legislature provide the manner of approach?

MR. WILLIAM MILLER: As a matter of fact, from what Commissioner Bates said, the details of how these things are handled, we will know more about it as time goes on. Just leave it to the law to provide the manner of handling the cases. Merely provide that the Governor shall have this power to pardon and

may be assisted by a body or such other body in such manner as may be provided by law.

MRS. BARUS: Excuse me, but the Legislature may set up a system of parole.

MR. BARTON: That was the story I was asked to tell. Perhaps I wasn't explicit enough as to the pardoning power and the reprieve power. That isn't going to be so onerous.

CHAIRMAN: Senator Barton, I think you were speaking on the motion, obviously. It seems to me that what we ought to decide here is the wording as to how we are going to give the Governor the power of reprieve and pardon, and then discuss the parole angle of it as a second point. There was a motion made by Senator Smith and seconded by Senator Farley.

MRS. BARUS: To include the power to grant reprieves, amended by Senator Farley, to permit reprieves without limitation.

MR. EGGERS: On the motion. The provisions in the New York State Constitution discussed by Mr. Miller provided for the Governor having the power of pardon and also a law to be created by the Legislature setting up a parole board.

CHAIRMAN: Does it bring in the subject of parole boards?

MR. WILLIAM MILLER: I assume this language would bring that in: "subject to such regulations as may be provided by law relative to the manner of applying for pardons." Presumably the Legislature could provide that all applications must first go to the parole board, and then its recommendations probably would be acted upon.

CHAIRMAN: Not being a lawyer, I don't know why you need put that in; because if you don't exclude it, then automatically the Legislature can provide by law.

MRS. BARUS: Obviously, there should be some rule.

MR. FARLEY: I disagree, Mr. Chairman. There should be a provision, not provided for in the Constitution but as provided by law. That eliminates any possible interpretation as to how the power should be handled. The first suggestion was that the Governor have the power.

MR. SPENCER MILLER, JR.: This question, while it seems separable, is in one sense pretty well locked in with the other. In this matter of the pardoning power on the part of the Governor, which Senator Farley indicates is regarded as an inherent power of the Chief Executive, there is also this procedure by which he is going to be aided in making his determination as to who is qualified for pardon. Colonel Walton made what is very obviously an important observation, namely, that the Governor himself cannot conceivably, if he is conscientious, study in detail all of the various cases that may come before him. He must rely upon some tech-

nical assistance in connection with it. In New York State, where there is set up a division of parole—a division, I might say, was set up in 1932, before the adoption of their constitution in 1938—they give to the board or the division of parole specific responsibilities of advising the Governor with reference to the exercise of the pardoning power.

Anybody who has been in the field of penal administration knows that there are cases which of necessity not only involve the Governor's dealing with the exercise of the right to parole a man, or to grant some type of limited or controlled liberty, but that there are cases where the exercise of the pardoning power comes as a logical sequence of a study of the qualifications of the person for limited parole. If I may have just a moment to read you a section from the Legislative Manual of New York State, you will see that it, referring now to the parole board, "upon request of the Governor shall investigate and report in respect to applications for pardons and commutations." Although the Governor's pardoning powers are not limited, the board has been granted authority by law to issue certificates of good conduct to any person convicted of crime who meets certain requirements. These certificates of good conduct protect the restoration of civil rights and legal disabilities which resulted from the conviction of crime.

There is another function which, again, is related to this responsibility of the division of parole, namely, the restoration of citizenship. Some of you, I am sure, are familiar with the fact that after a man has served parole and been discharged, the question arises as to restoration of certain rights—the right to vote, for example—and he can, after discharge, apply and receive restoration of citizenship. In New York State every year, the Governor, in the exercise of his power and upon investigation by the division of parole, will restore citizenship to certain persons. This is not the exercise of the pardoning power, but the exercise of something less than that full power which restores to full civil rights men who have been convicted of crime, who have been out and discharged.

So that while it seems a relatively simple thing to indicate that these matters are separable, I think that any clause that we adopt ought to recognize the fact that this power to pardon is inherent in the Governor, but that in its exercise some instrumentality, such as a department or division of parole, to which Senator Barton has referred, becomes in my judgment a necessary instrumentality for carrying out the provisions for this purpose. I am merely amplifying that because I think we have to recognize that these things can't be quite so easily separated into water-tight compartments. They are interrelated and have to be so considered.

CHAIRMAN: We have a motion on the table. I think we should either vote it up or down.

MR. SMITH: I am willing to withdraw the motion if Senator Farley is. We had a subject here which sort of slides into two or three other subjects. The problem is, where are we going to draw the line?

MR. FARLEY: I think we should dispose of whether the Governor should have the inherent right to pardon, or whether he and others appointed by him may do so.

CHAIRMAN: I think that an excellent suggestion and I would like to suggest that if you are agreeable, Mr. Smith, you withdraw the motion.

MR. SMITH: Yes.

CHAIRMAN: Senator Farley?

MR. FARLEY: I move that the Governor of the State of New Jersey have the inherent and sovereign right to grant a pardon, and he alone have that right.

MR. SPENCER MILLER, JR.: Second the motion.

MR. FARLEY: Or anyone acting in place of the Governor.

CHAIRMAN: Your motion indicates the sense, not the wording.

MR. FARLEY: That's right.

MR. BARTON: The question of reprieve comes in. Should the word be used also.

MR. SPENCER MILLER, JR.: I would assume that the word "reprieve" is merely a technical addition to carry out the intent.

MR. SMITH: May I make a motion to add to what you say the Chief Justice and the Attorney-General?

CHAIRMAN: Is that motion seconded?

MR. FARLEY: I think that's creating an issue to the motion itself. I'd rather dispose of it.

MR. SPENCER MILLER, JR.: I move the question, Mr. Chairman.

CHAIRMAN: Does anybody second the amendment? . . . Do you second the amendment? . . . There is no second. The amendment is out of order. All in favor of the motion say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

MR. FARLEY: I move that the Governor shall have the right of unrestricted reprieve.

CHAIRMAN: Seconded? Yes? All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

MR. SMITH: I was just going to ask if it is desired to include the power to remit fines and forfeitures, which I think is important?

MR. FARLEY: I would like to make a motion to that effect, Mr. Chairman.

CHAIRMAN: Any second?

(Seconded)

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

MR. SPENCER MILLER, JR.: I wonder whether or not the question of treason and cases of impeachment ought to be added to this statement of policy, following the New York practice? I would so move, that the subject of treason and impeachment be within the competence of the Chief Executive.

(Seconded)

CHAIRMAN: Motion has been made and seconded. Any discussion? . . . All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

I think the last four motions made will comprise one paragraph in this new Constitution. All will be in one paragraph, is that correct? Yes.

MR. FARLEY: It might be advisable to incorporate "as provided by law." I ask the Chair that where that is necessary the language be inserted.

MR. WILLIAM MILLER: •I will have a draft for that.

CHAIRMAN: Any discussion? All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: It is so ordered. . . . Commissioner Miller, Mrs. Barus has asked you a question.

MR. SPENCER MILLER, JR.: Will you kindly state the question?

MRS. BARUS: I assume that we now want to work out the parole question, and you said it does overlap on the pardon. Would you say to leave it out or follow Senator Barton's idea.

MR. SPENCER MILLER, JR.: It seems to me that in the de-

velopment of some provision for a division of parole—which I hope very much can come out of either this task of constitution-making or the effort on the part of the Legislature to implement the Constitution we draft—it would seem to me that in the statute which would provide for the creation of a division of parole, there should be spelled out certain powers that would aid the Governor in the performance of his function as the man who is qualified to exercise the pardoning power. That is to say, it seems to me that the division of parole might very properly follow the pattern that has been set up in New York State. We are in the doubly fortunate position that we not only have as our Commissioner of Institutions and Agencies one of the foremost criminologists in the United States, but a man who has six years' experience with the division of parole and knows the question intimately.

I would say, Mrs. Barus, that I would hope that we might have some general statement in the Constitution with reference to the power to parole. But the detail as to how it should be carried out would seem to be statutory and not constitutional. I do think it would bring our Constitution into conformity with current practice if it made reference to the parole function, which was wholly unknown in 1844, but that it should be general, not specific. I do think that this Committee might very properly transmit to the Legislature a proposal for the creation of a division of parole, as a device to implement what has come to be set up in general form in language included in the Constitution.

MR. FARLEY: May I suggest that the Governor have the power to appoint five men or women to a board of parole, whose powers and duties shall be established by the Legislature?

MR. WALTON: Senator Farley, don't you think it is a mistake to tie it down that specifically? Changing conditions may require other arrangements. I would rather leave the question of parole and those things that are less than a pardon, such as the restoration of the right of suffrage, to the Legislature.

MR. FARLEY: I think there should be some provision in the Constitution for such a board.

MR. BARTON: That was my thought when I asked Mr. Bates the question, as I said before, as to whether the Legislature should have the power to set up a board of parole.

MRS. BARUS: My recollection is that the Legislature may set up or provide for a division of parole.

MR. FARLEY: That's exactly what I have in mind.

CHAIRMAN: You don't want to use the word "may"; you want to use "shall."

MR. FARLEY: I move that the Constitution provide that a parole system be established by law.

CHAIRMAN: Second to that?

MR. SPENCER MILLER, JR.: Second.

MR. DAVID YOUNG, 3d: Commissioner Miller talked a few minutes ago about restoration or license to be at liberty, and it was mentioned that if you provide a system whereby parole may be granted as provided by law, prisoners could go to the parole board. That would relieve the Governor of the handling of 472 cases and cut down to fewer number cases of executive clemency.

MR. WALTON: That would be another type of parole.

MR. SPENCER MILLER, JR.: That's exactly what a parole is—a license to be at liberty. I think that subterfuge is unnecessary if we invest the right to appoint a parole board, as provided by law. That's all you need to say. That covers it, and it would be implemented by statute. I don't think we should specify the number of board members, or their salary or functions. That is in accordance with sound principles of present practice.

MR. EGGERS: Would that motion also permit the Legislature, in setting up the function of parole, to provide for the restoration of civil rights?

MR. YOUNG: I asked that question of Commissioner Miller.

MR. FARLEY: In answer to Mayor Eggers, the Legislature can set up any type of board. It may be a board of three, or five, or ten. The Legislature may call it a license to be at liberty or a parole division. I think the over-all picture is soundly presented by Senator Barton and should be established by law.

MR. EGGERS: My question is directed to the flexibility of the language.

MR. YOUNG: We want to be sure that the wording of this section is going to accord with the power of authority.

MR. FARLEY: The language of the proposed 1944 revision wouldn't fit, because it makes a specific statement that there shall be a board of pardons. This may affect that phraseology.

MR. SPENCER MILLER, JR.: I think that this is better language than the 1944 provision. I think what you have done would conform to the best practice, to indicate the power of the Governor to appoint a parole body.

CHAIRMAN: I would like to ask the Secretary to read the motion.

MRS. BARUS: Motion made and seconded that the Legislature shall provide for a system of parole.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

I think that subject to the wording which will be given to us by the draftsman this afternoon, we have completed this subject. Before we go on to the next subject, there is a committee outside from the New Jersey State Association for the Advancement of Colored People who would like to come in and present a petition.

I would like to introduce at this time, Mr. D. H. Martin.

MR. D. H. MARTIN: I am Chairman of the Committee of the National Association for the Advancement of Colored People for the State of New Jersey. In other words, it's the state branches that I represent. We have with us Reverend E. S. Hardge, who is the president of the state branches of the Association. This committee has filed with your Committee a petition in regards to the state militia. We fully realize that all of our requests cannot be granted or included in the State Constitution, and that there are certain things that we should leave to legislative acts.

I am not a lawyer, but I do feel very keenly my responsibility as a citizen, having fought in the first World War. I have a family and children. I feel very keenly the humiliation and indignities heaped upon them in the State of New Jersey. I also feel very keenly that a state militia should be the beginning of a democratic process in the State of New Jersey. I guess as long as we have two men in the world we are going to have wars. We are now building toward a democratic process and a United Nations. New Jersey is a part of the United States. We feel very keenly that New Jersey could make a very definite contribution to the peace of the world by showing to the other states in the Union that we believe in the democratic process.

I see no reason why my son should be drafted or join a state militia and be sent off to some segregated unit. He is a human being, feels very keenly, and has all the senses of all the other human beings. It certainly isn't a Christian principle. I realize in a political world I dare not mention Christianity. The State of Connecticut has just seen fit to abolish its separate, segregated militia. Why can't New Jersey take the lead in some of these democratic processes? My boy has gone to the same schools, enjoyed the same privileges as all other children. He has partaken in the activities and has given what he has to the institutions, but if we should have a war tomorrow, he is snatched up, perhaps if he is in the state militia, and sent to another segregated army.

We were very bitter as colored citizens during the first and second World Wars. We think and feel that if we want to have a world peace, it is certainly time for the individual states, while we are writing the basic laws and documents which are going to stand for the next 200 or 300 years—we earnestly plead and ask that you men and women of character and responsibility, please

consider that we, too, are human beings. We come to you, who are in power, asking you to consider our children as you would like for us to consider your children. I wasn't to make any statement other than to say that Reverend Hardge is here as our state president and represents the entire State and all of its branches. I thank you.

CHAIRMAN: Would you submit to any questions, if there are any, Mr. Martin?

MR. MARTIN: I'll be glad to, and if I can't answer them I have my president here.

MR. EGGERS: I'd like to say for the benefit of the Committee, before I ask a question, Mr. Martin, that Mr. Martin is a publisher of one of the most widely read colored newspapers in this State. Now, Mr. Martin, the policy you are asking this Committee to adopt, isn't that in conformity with the policy adopted by the United States Navy and Army—non-segregation?

MR. MARTIN: That was extended during the last war. We had no one but cooks, mess men and menial laborers in the Navy up to the second World War. The democratic process, I must say, was greatly extended during the second World War. But in this State, in which we have this militia, we haven't made any progress at all; and when you advertise here for men for the state militia—Senator Farley there knows, because we hounded him quite a bit during the drafting of the first Constitution, or rather rewriting of the first Constitution, the drafting of the proposal—when you read a sign out on the Armory, or somewhere, advertising for men, as much as we are made to feel that in rewriting the Constitution, when you say all men, that means every human being, it does not in America—it does not!

CHAIRMAN: Would anyone else like to ask Mr. Martin a question?

MRS. BARUS: Just what, specifically, are you suggesting Mr. Martin?

MR. MARTIN: We are suggesting, Mrs. Barus, that this whole process be thrown open to everyone. When you say all men, you want all men for the militia. You can take my boy, or your boy, or anyone and put them right in the militia.

CHAIRMAN: May I answer Mrs. Barus' question, Mr. Martin? I have your printed copies here and I should have read the proposal first. I am sorry that I did not. It is very brief (*reading*):

"The New Jersey State Association of the National Association for the Advancement of Colored People, respectfully petition the Committee on the Executive, Militia and Civil Officers to include as one of your proposals, when you submit your report to the Constitutional Convention, a proposal prohibiting discrimination on account of race, color, creed, religion or national origin, in the militia of the State and specifically prohibiting separate or racially segregated units of the militia of this State."

The above, as read, is respectfully submitted by the New Jersey State Association of the National Association for the Advancement of Colored People.

MR. MILTON A. FELLER: Suppose the anti-discrimination clause is inserted in the Bill of Rights, or in some other section of the Constitution. Would that be sufficient?

MR. MARTIN: I am not a lawyer and not a legislator, so I couldn't say. We are just here stating, well, I might as well be plain spoken, our grievances and asking that they be remedied. The technical side of this whole thing has been that they would have—and I am not interested in the technical questions—to keep colored and white separated. Someone must have gotten together years ago for me to be the product I am today. But, I would say this—why have a colored unit, take my boy and other colored kids, and send them off to one spot and train them? Then you may take those kids, who have never seen any of that, which you did in the second World War—they were sent to Georgia and they were treated very kindly by the people down there. But we turn right around and take, say Company C, and assign them to Company so and so—I've been out quite a few years, therefore I don't remember the correct terminology—but we say if you're going to draft A, B or C, and he wants to join the militia, he can join. You won't have any more problems in that than you do in everyday life.

You people are fighting every day, so why shouldn't the colored and whites fight among themselves—and we're going to fight like anything before we get this Constitution over with.

MR. SPENCER MILLER, JR.: May I pursue the question which Judge Feller just asked Mr. Martin, because it seems to me that he has raised a basic question? If there is written into our new and modified Bill of Rights a clear and unequivocal statement of the rights of all men, and the elimination of any possibility of discrimination on the basis of race, color, creed, religion or national origin, why would it be necessary to spell that out in other succeeding articles in the Constitution? That is the Bill of Rights for all citizens in the State of New Jersey. It would cover everyone, whether the men were in the Legislature, the Executive Branch, the Judicial Branch or the militia, or what not.

I wonder why you feel it would be necessary, if that is written into the Bill of Rights, to have it repeated again in the article dealing with militia? I just pursue that question with one other observation—that I think you will not find in the more recent constitutions where that provision for civil rights has been expressed and set forth in explicit terms, that it has been spelled out in detail again in subsequent articles.

MR. MARTIN: I would say, Commissioner, that that may be

the proper procedure. We, however, want to bring it before this Committee, as well as other Committees that we are planning to appear before, to let you know the exact status of those conditions in this State.

MEMBER: I presume, Mr. Martin, that you are also appearing before the Bill of Rights Committee?

MR. MARTIN: That is correct, sir—in regard to other matters. But at the present time, under this Constitution, we do maintain separate units and a separate militia because we have some of our own group who want to beat the drum and head up a few committees and can steal a few dollars in operating the Armory and matters like that, and we are very bitter toward that. Well, that's the final analysis. You people do the same thing.

But at the same time I would like to say this: The members, the men and the women here who are rewriting this Constitution, are altogether a different type. We are not appearing here as spokesmen for those who want those separate units. We can bring bus loads down here who maintain they want it, and, unfortunately, we have run into these committees. They tell us, "Well, we had a group yesterday who wanted it." But we also know that those people are not the representative group, and you don't listen to those in your group who want to pull your group back.

CHAIRMAN: Would anyone else care to ask Mr. Martin a question?

MR. EGGERS: Mr. Martin, if the Convention adopted as part of the Constitution a general anti-discrimination clause, and in the opinion of lawyers—and I think it is generally their opinion—that would be binding upon all walks of State Government and all walks of civil life, then you wouldn't insist upon this particular clause being in this particular section of the Constitution?

MR. MARTIN: Personally, I'm afraid to say "yes" or "no." I'm not a lawyer, but I do say this—it seems to be the proper procedure, and I don't see any reason why we couldn't clear it on such a matter as that. We have pretty good legal advice on the outside and we would run to them.

MR. EGGERS: You have a lawyer with you; perhaps he would like to answer some questions?

MR. FARLEY: I think Mr. Martin wants it clearly stated in such phraseology as to prevent what he says now exists. Is that right, Mr. Martin?

MR. MARTIN: That's right. In other words, we want to be men and women, the same as you. We want to be sure that there's no quibbling about the whole thing. We feel the time is right now that we should be treated as men and women, and we're going to demand that. We've sacrificed. We've given everything we had

in two World Wars, and America is now the model of democracy throughout the world. We are No. 1. We want the democratic processes to be extended to all the peoples of the world, but we haven't got it in America, and we haven't got it in Jersey.

CHAIRMAN: Mr. Martin, would any other members of your committee like to speak?

MR. MARTIN: Reverend Hardge is really the leader of the committee.

CHAIRMAN: Mayor Eggers would like to ask another question.

MR. EGGERS: Well, then, it's generally your opinion, Mr. Martin, that you don't want to risk the general clause in the Constitution; you want this adopted, too, if possible.

MR. MARTIN: I guess that would be the consensus of opinion, until I can get some more advice.

MR. WALTON: If you followed your thoughts logically, wouldn't you have to put it in, for example, in connection with the parole system that is set up, and with any one of the several dozen clauses? It would be just as logical to put it in there as to put it in the militia clause, even if we had a general clause in the Constitution against discrimination.

MR. MARTIN: It all boils down to one thing. We do not want a separate and distinct militia for colored people; that's the whole thing. Any way we can do away with it, we thank you. We are going to pray for that and fight for it.

CHAIRMAN: If no one else cares to ask Mr. Martin a question, perhaps the Reverend Hardge would like to speak to us.

REVEREND E. S. HARDGE: I was just about to say that Mr. Martin has covered the whole situation. Our main purpose is to wipe out, if possible—and we know it is possible—a segregated unit of the state militia. We feel that it is un-American, undemocratic and, above all, it's un-Christian. We are citizens, we play our part, and since we are we would like to be treated as such in all of the activities of the State. And I think we, as Americans, are held up to ridicule throughout the world because of our attitude, and we are looked upon by some people as hypocrites, when we are not. But I think that kind of practice does put us before the world as hypocrites, and this is the basis—when we have these segregated units of the state militia. Our Army is taken from that and it is carried through in our national set-up. As Mr. Martin has said, our main object down here is to plead with you to wipe out segregated units of militia.

MR. SPENCER MILLER, JR.: Mr. Chairman, I am wondering whether I might not only address this question to the Reverend Hardge, but to his committee itself? I said a moment ago to Mr. Martin that they should turn to competent, legal counsel for advice

on this matter. Would it not be appropriate for us to ask the committee to secure such competent counsel to guide this Committee to determine, if there is a clear, unequivocal statement in the Bill of Rights on non-discrimination, whether that would not make unnecessary the inclusion of this statement in the article dealing with militia. I think—I don't presume to pre-judge what their lawyer is going to tell them—but I think, as I have studied constitutions, that they would be advised that if there is such a statement set forth in the Bill of Rights, it would be unnecessary to spell it out in all succeeding articles, particularly the one having to deal with the militia. However, I am wondering whether we could not ask them for such an opinion from their counsel or legal advisory committee, so that this Committee, in turn, would be guided in knowing whether it is necessary actually to spell it out in this article that we are charged with drafting.

MR. EGGERS: Mr. Chairman, of course I don't like to disagree with Commissioner Miller on his judgment, but we are asking the committee to go out and retain legal counsel for an opinion on constitutional law, and as each one of us knows, opinions on constitutional law cost money, and plenty of money. I think this Committee is in a position, through out own technician, who has a grasp of constitutional law, and through the efforts of the Attorney-General, to obtain an opinion as to whether a general clause in the Constitution would protect the rights of these citizens without embodying them also in the militia clause of the Constitution, and thus save the men the cost of going out and securing the advice of legal counsel.

MR. SPENCER MILLER, JR.: Mr. Chairman, I would be quite prepared, if we could get some advice that could not only be relied upon but in which this Committee would have full confidence, to say that would be a wholly acceptable procedure. But I do think that what this Committee ought to do is to act with the fullest knowledge of what would guarantee the principle that this group has presented to us this morning.

MR. FARLEY: All that these gentlemen are asking for is a clear statement, without any equivocation whatsoever. It doesn't necessitate counsel. As a matter of fact, everyone at this table has a clear concept of what is being presented, and it's just a question of phraseology. All they are asking for is a clear enunciation of their rights, without any equivocation whatsoever. Isn't that right?

REV. HARDGE: That is right.

MR. HANSEN: I think, Mr. Chairman and members of the Committee, that if there is any doubt at all about a general clause protecting the principle that has been proposed here this morning, that such doubt should be resolved in favor of this argument be-

cause, while I agree with Colonel Walton that the same principle might be applied to any other subdivision of our State Government, yet I do feel that this is a matter that stands out and is quite different from ordinary State Government. As Mr. Martin and Reverend Hardge have said, in time of war there is no color line drawn. There are no exceptions. Now, this is a different matter than a man working in the Labor Department or any other civil department of the State. This is a matter that vitally effects these people who are talking for their constituents here today.

I say that if there is any doubt about this situation at all, let us not quibble about the thing. We might get one lawyer who would tell us one thing and another lawyer, just as prominent and with just as great an ability, who might give us a different opinion. I say that if we, as a Committee, come to the conclusion that there is any doubt at all about a general clause protecting the arguments that have been brought forth this morning, or putting it into effect, I, for one, would be greatly in favor of seeing to it that no question may arise as far as the militia is concerned—the boys that take their chances, the boys that die, the boys that suffer, just as any other boys that take their chances. I say that if there is any question about it at all, we should play safe.

I would be in favor, not as going on record now because the matter is just up for discussion, but I want these men to know that if there is any doubt about it at all, I am going to see to it that your people are protected as far as the militia, as far as the war department is concerned in the State of New Jersey.

MR. BARTON: First, I want to say that I concur heartily with everything Judge Hansen said. I am not in a position to give an opinion because I do not have before me the clause which the Bill of Rights Committee is drafting. For that reason alone, sir, I would move that we keep this matter entirely in mind until we have an opportunity to see that clause and pass upon the clause, and then I would say as Judge Hansen says, if there are any doubts. I move that this be tabled until we see the clause.

MR. HANSEN: I second the motion.

CHAIRMAN: As I understand the motion of Senator Barton, and seconded by Judge Hansen, the motion is to the effect that insofar as our including the phraseology presented by this committee in our militia clause, we reserve that decision until we see what phraseology on the same subject is put into the section that is being handled by the Bill of Rights Committee.

MR. EGGERS: I move an amendment to the motion—that we incorporate it in our militia clause as part of the clause reported out of this Committee, subject to any limitations which might be placed on it by the Bill of Rights Committee. I repeat, I move to

amend that we incorporate this clause into our militia clause of the Constitution, and it is to be reported out of this Committee, subject to any limitations—or rather, we don't need that. We will just leave the motion plain: that we incorporate this clause in our militia clause as reported out of this Committee.

MR. BARTON: Which clause do you mean now?

MR. EGGERS: The clause that has been submitted.

CHAIRMAN: There should be a statement that in the formation of the state militia there should be no discrimination with respect to race, color, creed, religion or national origin.

MEMBER: I second the amendment.

MR. SMITH: I would like to talk on both the amendment and the motion. If I followed you correctly this morning, you stated that after we had drafted our new Constitution, the Committee would then give a public hearing to anyone who wished to be heard and set forth their recommendations. It does seem to me that we have been doing a lot of talking here. These gentlemen have stated their case and I think we understand it, but until we know what the other Committees have done, we will not know whether that is acceptable to them or not. They are going to have their day in court. We are going to have an opportunity to discuss it and decide whether it is satisfactory or not.

I'm quite certain—I know I would be if I were in their situation—I'm quite certain that after I had read the phraseology, I would want to consult my advisors to find out whether it had accomplished the purpose or not, unless it were so clear that there was no question about it. It does seem to me that both motions are out of order as far as the plan you are going to adopt is concerned and what you are going to do. After we have adopted our language here—what we intend to recommend—we send it to these folks and we have a public hearing. Then, if it isn't satisfactory, they can tell us about it and everything would be in order.

MR. EGGERS: That is exactly the purpose of the motion. We have adopted certain tentative proposals which have been drafted into the Executive, Militia and Civil Officers Article which is to come out of this Committee. After that has been tentatively adopted, my conception of it was that we were to have public hearings on the Article as written by our technician.

My amendment is that this proposal be put into the militia clause which will be reported out and then be the subject of a public hearing, the same as all of the others. Our Section will be written up with that clause in it, and be subject to a public hearing. If the Committee on the Bill of Rights comes in and says this is not necessary, and the constitutional lawyers come in and say this is not necessary—if proponents of these people, of the same race, come in

and say it is not necessary; it is covered in the other clause—then it will be considered again. But at least they are protected in the tentative draft; it's in there, so that if it's omitted in the other Committee, they are protected here. That's the purpose of my amendment.

MR. FARLEY: Mr. Chairman, may I suggest that it may be unnecessary to have a public hearing. I think that after you reduce it to writing and are able to study the phraseology of that section, maybe they will be entirely satisfied and it will be unnecessary to have a public hearing. However, if they are then dissatisfied, a public hearing would be in order.

CHAIRMAN: Senator Farley, this morning, when I made my report from the floor of the Convention, I stated that our proposals would be mimeographed and hundreds of copies, perhaps thousands, spread all over the State and a public hearing would be called for everybody, ten days or two weeks from today. That was what was referred to as a public hearing.

I certainly feel in sympathy with this point. I think one of the worst things we can do—this hasn't anything to do with them or anybody else—is to put repetitive phraseology in the various sections of this Constitution. For instance—I am just a layman—if there is a general over-all non-discrimination clause adopted as part of the Bill of Rights and the lawyers come and tell us that they aren't protected under this clause, then I'll have to come back and say we will have to have it in choosing the Governor, in choosing every member of the Legislature and in choosing the Board of Pardons. There won't be a single section in the whole Constitution that won't have this phraseology, not one. If it has to be in here, what's the difference between attaching it to the militia clause and attaching it to the appointive or elective office of every single human being in the Constitution?

MR. EGGERS: Only this, Senator. It wouldn't be necessary in relation to any civil officers, but these men, at least in the militia, take an oath that they will support the military rules while they are there in service, and they can be assigned or ordered to any type of duty, and they can't appeal to the civil courts.

CHAIRMAN: Are we talking about the same thing? I am only talking about a method. I feel very definitely that now, with all due respect to you and these gentlemen, it has nothing to do with what they are trying to accomplish. It has to do with the method. We shouldn't put it in yet; I think we should see that the sense of the first motion is right.

MR. EGGERS: I agree with you, but I also disagree with you in one respect. The thought behind my amendment is that the Bill of Rights Committee might not report out or adopt any clause on discrimination. That being so, these people are entirely protected with

this clause, insofar as the militia is concerned. If the Bill of Rights Committee does report a discrimination clause, then I am quite certain that it would cover everything, including the militia, and we wouldn't have to be concerned with having this in. But, in the meantime, my amendment is to put it into a tentative draft, distribute it throughout the State in the tentative draft, and then we could get an expression of opinion from all over the State on it. And if the Bill of Rights Committee comes out with the same kind of a clause, then we will know where we are—we can eliminate one or the other.

MR. YOUNG: Not because I don't agree with the theory—I think that if it is included in the draft we will have to get it from the Bill of Rights Committee—but I think that it is rather premature at the present time to vote on this particular amendment, because it seems to me that we are guessing as to what some other Committee is going to do. It has been the general policy of this Committee to refer a matter to the Chairman of the Committee and have it discussed with the other Committee that is handling that matter. It would be my thought that during the next 24 hours you, as Chairman, would discuss what was going to be in that particular section and report back here. Then we could decide what we are going to do. If it is left out of the Bill of Rights, I, for one, would be willing to vote regarding that section. But if it is in there, then I feel it takes care of every section, just as you expressed it. The Court of Pardons or any other division of our government—why, it will have to go in each and every phrase if it isn't in the Bill of Rights! I certainly agree that it should go in there if it isn't in any other place.

CHAIRMAN: Excuse me just a second. Let me make this point. Here is one thing that worries me about your suggestion. Suppose we put it in this militia clause and then we disseminate that all over the State. Unquestionably our Committee Report will be the first one out. Then the Bill of Rights comes along and puts it in, and in a subsequent draft we take it out of ours. There is going to be an awful lot of misunderstanding. We would cause an awful lot of confusion.

MR. EGGERS: I withdraw the original amendment and wish to make another amendment.

CHAIRMAN: Will the seconder accept the withdrawal of the amendment?

MR. SMITH: I accept the withdrawal.

MR. EGGERS: I will amend it in this respect then—that you consult with the chairman of the Bill of Rights Committee and find out whether they are going to incorporate this discrimination clause as part of their Committee Report, and if they are not, then we incorporate it in our section.

MEMBER: I second it.

CHAIRMAN: The amendment has been made and seconded.

MR. SPENCER MILLER, JR.: Mr. Chairman, speaking not precisely to the motion but for the motion, I think it might facilitate our discussion if I read just two paragraphs from the New York Constitution, because it does precisely what we have been suggesting here. Under the Bill of Rights in the New York Constitution which, I am sure Bill Miller would agree, is by and large one of the best state constitutions at the present time, it says in section 11 of the Bill of Rights (*reading*):

"No person shall be denied the equal protection of 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 any firm, corporation or institution, or by the state or any agent or subdivision of the state."

That's the general clause. Now, when you come to the militia you will find that in Article 12 it begins by saying that (*reading*):

"All able bodied male citizens of the United States between the ages of 18 and 45 who are residents of the state, and all other able bodied male residents thereof, between such ages, who have or shall have declared their intentions to become citizens of the United States, will constitute the militia. . . ."

Not a word in the militia article repeating what has been set forth in the Bill of Rights. What I've been saying, and I think it is implicit in this Committee, is that if it is not clearly set up in the Bill of Rights, then obviously it ought to go in. If it is there, then I think equally obviously it doesn't have to be spelled out in each successive article in the Constitution.

REV. HARDGE: I'd like to ask a question.

CHAIRMAN: Reverend Hardge.

REV. HARDGE: Does the State of New York have a separate militia? In spite of that, they do have it.

MR. SPENCER MILLER, JR.: I really don't know.

MRS. BARUS: I agree, but nevertheless, I know it hasn't worked right in New York State. As you all know, you have to fight for things as well as for having them preserved. But I do think there is a point that hasn't been made yet, and that is, sometimes when you try to cover every specific situation you leave it really less strong than if you make an all-over general statement. In other words, I am wholly in sympathy with the proposal, but I think that you have a stronger position if it is an all-inclusive form. If you try to put it in every single article, the implication sometimes is that if you miss one somewhere, then it will be that one missing and you leave a loophole. I would like to ask Mr. Miller if that is not correct?

MR. WILLIAM MILLER: Frequently it is true.

MR. WALTON: I do not think it belongs here. On the other hand, just so there can be no doubt, I would very much favor asking the Bill of Rights Committee to put into their Bill of Rights what-

ever wording they may have, and when they come down to agencies of State Government, to add, "and in the militia." Then there wouldn't be the slightest doubt about it. I think it's proper for us to request that of the Bill of Rights Committee, and then there is no argument and it is not out of place but where it technically should be.

CHAIRMAN: May I interrupt there and make a suggestion to you that you include in your amendment the suggestion of Colonel Walton?

MR. BARTON: Mr. Chairman, as the maker of the original motion which was only for the purpose of finding out what we were going to do, I would like to hear that amendment now.

MRS. BARUS: The Chairman is to consult with the Bill of Rights Committee to make sure that they do include such a clause in their Article, with the new addition that we suggest to them that they put in the phrase "and in the militia," in the general clause. That is the way it stands now.

MR. BARTON: With the permission of the seconder, I withdraw my motion.

CHAIRMAN: Will you withdraw your amendment?

MR. BARTON: I withdraw the amendment.

CHAIRMAN: Everything is now withdrawn.

MR. EGGERS: The motion now is that the Chairman of this Committee be empowered to discuss with the Bill of Rights Committee whether or not they are going to incorporate in their Committee Report an anti-discrimination clause, and further, that it is the suggestion of this Committee that if they are, that they include in it the words, "and in the militia."

MR. FARLEY: I second the motion.

CHAIRMAN: Seconded by Senator Farley. Any discussion? . . . All in favor please say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed?

(Silence)

CHAIRMAN: Motion carried.

MR. EGGERS: I make a further motion, that in the event that the Chairman of this Committee, after consultation with the Chairman of the Bill of Rights Committee, receives an adverse report to the effect that they will not adopt an anti-discrimination clause, that this Committee then adopt the anti-discrimination clause as it affects the militia.

MEMBER: I second the motion.

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

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

MEMBER: I move you, Mr. Chairman, that a vote of thanks be given to this committee for being with us today.

MEMBER: I second the motion.

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

(Chorus of "Ayes")

CHAIRMAN: It is so ordered. Thank you very much, gentlemen.

REV. HARDGE: Mr. Chairman, on behalf of our committee I want to thank you and your Committee for permitting us to be with you today.

CHAIRMAN: It was nice to see you, sir.

We will now recess for lunch and will reconvene again this afternoon at 2:00 o'clock sharp.

(Recess for luncheon at 12:50 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 8, 1947

(Morning session)

(Executive session)

*(Minutes)*¹

A meeting of the Committee was held at 11:00 A.M. on Tuesday, July 8, 1947, in room 109, Rutgers University Gymnasium.

Members present were: Chairman Van Alstyne, presiding; Barton, Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S. Walton and Young.

The minutes of the previous meeting were approved.

The Chairman distributed copies of Governor Edge's brief on the powers of the Governor.

The Chairman read a letter from Secretary of Agriculture Allen expressing his satisfaction at the retention of the present system of the Agriculture Department.

Mrs. Edwin Bebout appeared for the League of Women Voters. She read a proposal supported by the League on the civil service, taken from the "Model State Constitution." Under this plan counties and municipalities would have the right to set up their own merit systems or to go under the state system. The state civil service should be improved, probably made into one of the principal departments with an advisory board of citizens, but with the administrative functions left in the hands of a commissioner.

The Committee then discussed parole and pardon.

Smith moved that paragraph 9 of Article V [of the 1844 Constitution] be eliminated, and that paragraph 10 be adopted as shortened at the last committee meeting, but also to include reprieves. Motion seconded.

Farley moved an amendment to omit the time limitation on reprieves. Amendment seconded and accepted.

There was a discussion of the burden on the Governor of considering the many cases that come before him. Mr. William Miller stated that if the applications for full pardon were separated from

¹ The Secretary's minutes are reproduced because they clarify the transcript made from the Soundsciber records which were not always clear, thus rendering the transcript imperfect. The transcript precedes these minutes.

the applications for parole, the burden would be considerably lightened.

There was a discussion of the principle of executive clemency, and the question whether the Governor should be solely responsible for granting clemency. Mr. William Miller called attention to the New York Parole Board which advises the Governor on pardons. The restoration of citizenship rights also comes before such a board of parole. However, the board is to be regarded as simply a necessary instrument for carrying out the Governor's power of pardon.

Smith withdrew his motion.

Farley moved that the Governor have the sovereign right of pardon. Motion seconded and carried.

Farley moved to include the right to grant reprieves without a time limitation. Motion seconded and carried.

Farley moved to include the words "fines and forfeitures." Motion seconded and carried.

Miller moved that the clause include an exception of treason and impeachments. Motion seconded and carried.

Chairman stated that all these would be combined in a single paragraph on the pardon power.

Farley moved that the paragraph also include "as provided by law." Motion seconded and carried.

Barus raised the point that Commissioner Bates had felt it desirable to include a mandate to the Legislature to set up a system of paroles.

Mr. William Miller stated that this could be submitted as a suggestion to the Legislature.

After discussion, *Barton* moved to include the provision "a system of paroles shall be provided by law." Motion seconded.

Eggers asked if that would cover the restoration of civil rights.

After discussion which brought out the necessity of making a simple statement without specific language, and the fact that the law could give the parole board ample powers to cover all necessary functions, the motion was carried.

At this point the Committee received a delegation from the state branch of the National Association for the Advancement of Colored People, headed by Mr. Fred Martin. Mr. Martin presented a request that the Committee bar segregation in the State Militia.

There was a long discussion in which the members of the Committee made it clear that they all favored the principle of non-segregation, but that they believed that the best way to accomplish this end would be by means of a general, anti-discrimination clause in the Bill of Rights.

Barton moved to table the proposal until the Committee has seen

the draft prepared by the Committee on Rights and Privileges. Motion seconded.

Eggers moved an amendment to incorporate the proposal of the NAACP in the Section on the Militia, subject to the action taken by the Committee on Rights and Privileges. Amendment seconded.

It was brought out in discussion that there will be further opportunity to be heard when the Committee publishes its tentative report.

Eggers urged the inclusion of the proposal in this tentative draft.

Chairman called attention to the fact that it would be difficult to withdraw the clause after publishing it, and might cause misunderstanding of the Committee's intent.

Eggers withdrew his amendment.

Motion carried.

Eggers moved that the Chairman consult with the Chairman of the Committee on Rights and Privileges to ascertain their intentions in this respect.

Walton moved to suggest the addition of the words "and of the militia" to the clause under consideration by the Committee on Rights and Privileges.

Eggers accepted this suggestion.

After discussion, *Eggers* withdrew the motion.

Eggers moved that the Chairman be empowered to discuss the question of anti-discrimination with the Chairman of the Committee on Rights and Privileges, and to suggest that they include in such a clause the words "and of the militia." Motion seconded and carried.

Eggers moved that if the Committee on Rights and Privileges is not planning to include such a clause, this Committee should include the proposed anti-discrimination clause in the Section on Militia. Motion seconded and carried.

Smith moved a vote of thanks to the delegation. Motion seconded and carried.

Committee recessed for lunch.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 8, 1947

(Afternoon session)

(Executive session)

*(Minutes)*¹

The Committee reconvened at 2:00 P. M.

Members present were: Chairman Van Alstyne, presiding, Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Walton and Young.

The Committee returned to the discussion on pardon and parole. Mr. William Miller submitted a tentative draft.

Walton moved to include "treason" in paragraph 1; and to add the first sentence of paragraph 2 to paragraph 1, leaving the second paragraph to read: "Paroles shall be granted as may be provided by law." Motion seconded.

Smith asked why "treason" and "impeachment" should be excluded from the Governor's power of clemency.

Walton replied that in his opinion treason should never be pardoned, and that impeachment is a special kind of trial within the jurisdiction of the Legislature in which the Governor should not be permitted to have a voice.

Barus moved to change the wording of paragraph 2 to conform to the motion made by Senator Barton, as follows: "A system of paroles shall be established by law." Motion seconded and carried.

Walton moved the approval of paragraph 3 of the tentative draft. Motion seconded.

Smith moved to amend by substituting the words "armed forces" for "militia." After a long discussion on wording, *Smith* withdrew his amendment.

Young moved the approval of the original draft. Motion seconded and carried.

The Committee took up the discussion of the section on the principal departments.

Barus raised a question about the clause "so far as practicable," in the sentence directing that the functions of government be allocated in the departments according to their major purposes.

¹ The Secretary's minutes are reproduced because they may clarify the transcript which follows.

Mr. William Miller replied that since there are various methods of classification of subdivisions of the departments, there should be some leeway allowed the Legislature. Such a provision tends to protect the Legislature from complaints and to set up a standard of reason and logic.

Farley stated that the Legislature would determine the major purposes on which classification should be based. He moved to end the paragraph after the words "principal departments" and to delete the rest of the paragraph. Motion seconded and carried.

Young moved to approve an addition to this paragraph as follows: "Temporary commissions for special purposes may be created by the Legislature and need not be fitted into the principal departments."

The Chairman stated that in response to an inquiry from Mr. Condit of the Motor Vehicles' Agents Association, he had declared that the Committee was not discussing the structure of any of the individual departments.

The Committee then took up the question of the Governor's right to succeed himself in office, upon motion by Judge Feller.

Farley moved that the Governor be permitted to immediately succeed himself.

Chairman stated that the Governor is being made a very powerful executive and that there should be some limit to his power. He would, for example, appoint all judges in the State, and would be Commander-in-Chief of the armed forces.

Walton stated that the Governor would not necessarily have this appointment power under the new Constitution.

Farley stated that the Convention is presumably going to follow the principle of strengthening all three branches of the State Government.

Smith: Giving the Governor too long a period in office would deny to other capable men the opportunity to serve as Governor.

Young: The decision should depend upon the other powers finally granted to the Governor.

Eggers: The Governor's power over the armed forces of the State is no reason for barring him from succession. Any other candidate may oppose the Governor for reelection.

This important question should be voted on now.

Barus: The thing to fear is not power but irresponsible power.

Miller: Research would not bear out the opinion that the New Jersey Governor would become more powerful than other governors under the new Constitution. No new state constitution has included a bar to reelection. The number of judicial appointments made by the Governor would be reduced by 60 or 70 percent if the Committee on the Judiciary adopts the proposals now before it. A comparison of the number of appointments actually made by Governors

Edison and Edge with those made by Governor Dewey would demonstrate the greater appointive power of the New York governor, who can appoint deputy commissioners as well as the chief administrative heads. The essence of the problem is to make power responsible to the people.

Smith: The succession should be decided not as a matter of principle but of practicality.

The motion was carried unanimously.

Farley moved that the Governor be limited to two terms. After discussion, he withdrew his motion in favor of Mayor Eggers.

Eggers moved that the Governor be permitted to succeed himself indefinitely. Motion seconded.

Smith: Feels that it would be logical to allow indefinite succession, if any at all.

Feller: Would agree to succession for one term, but not more, because of the possibility of the Governor's building up a powerful machine. A proposal to amend the Federal Constitution to permit two terms only is now before Congress.

Eggers: The limitation is not on the Governor but on the power of the people to choose their own Governor.

Young suggested the possibility of a separate referendum on this question.

Mr. William Miller stated that such a matter should be referred to the Committee on Submission and Address to the People.

Young: To include this provision would arouse great opposition and might defeat the Constitution.

Eggers: The Convention should not regard the opposition but should strive to write the best possible document.

Miller: Two terms is a custom to which we will probably revert, but logically, if succession is permitted at all it should be indefinite. It might, however, be wise to refer this question to the people separately.

Eggers: Agreed that there might be a separate referendum, but feels that the Committee should now take action on the question.

Barus: The second hearing planned by the Committee would give an opportunity for the opposition to express itself.

Eggers: If there is one thing that people never like it is "going down the middle aisle."

Hansen: The limitation on the terms of the sheriff and the Governor had some reasonable basis in 1844 but has such a basis no longer. There is no reason for allowing one additional term which does not also apply to indefinite succession.

Miller: 31 states have no limit to the succession of the governor.

The motion was voted on, 5 for and 5 against.

Farley moved that the Governor be limited to two terms in a lifetime. Motion seconded.

After further discussion *Feller* moved to amend by inserting the word "successive." Amendment seconded.

The vote was taken on the motion, 5 for and 5 against.

Miller moved that the Chairman be instructed to confer with the Chairman on Submission and Address to the People on the question of submitting the provision for indefinite succession to a separate referendum. Motion seconded and carried.

Farley stated that he favored the principle of referendum and moved that the people should have the right to repeal any act of the Legislature. Motion seconded.

Walton stated that this should be a legislative and not a constitutional matter.

Mr. William Miller stated that such a provision should not be made too sweeping, as bonds could not be sold if a repealer were made possible, for example.

Miller moved that this suggestion be referred to the Legislative Committee. Motion seconded and carried.

There was a discussion of submitting a minority report on the question of the Governor's succession, but no definite decision was made. Commissioner Miller suggested that we review this important decision when every member of the Committee is present.

The Chairman reported that acting on the instructions of the Committee he had discussed the question of a pocket veto with Senator O'Mara, Chairman of the Committee on the Legislative. The Senator stated that he personally was opposed to a pocket veto, and agreed to take the matter up with his Committee.

The Chairman read a letter from Major-General Powell, with a proposal for the provisions on the militia. It was decided to let the draft approved in the morning session stand as adopted.

The Committee returned to the discussion of Mr. William Miller's tentative draft, paragraph 2, Section IV on the principal departments.

Smith moved the approval of this paragraph. Motion seconded and carried.

Walton moved the approval of paragraph 3. Motion seconded.

Miller asked whether this paragraph would permit the present system of choosing the Secretary of Agriculture, and the present Department of Institutions and Agencies.

Mr. William Miller replied that the Department of Institutions and Agencies could be fitted in under this provision, but the Department of Agriculture could not. That is, the paragraph would permit the present method of choosing the Secretary of Agriculture but the method of choosing the Board would have to be changed.

Miller: Are we to draft the Constitution according to basic principles of government or for the accommodation of special groups?

Barus made the point that under the law the system is not truly representative even of the farmers themselves.

Motion carried.

Barus pointed out that Secretary Allen's letter to the Chairman expressing satisfaction with the Committee's action was written under a misapprehension, since he believed that the draft adopted would permit the present system to continue. The Chairman stated that he would reply to the Secretary and explain the situation to him.

Young moved to approve paragraph 4, giving the Governor power to request reports. Motion seconded.

There was discussion. Senator Farley made the point that the power to demand reports was inherent in the Executive and not needed in the Constitution.

Chairman: What would happen if an official refused to make such a report?

Mr. William Miller said it would be a breach of constitutional duty and cause for removal.

Chairman: To whom would this clause apply?

Mr. William Miller: To all officials.

Barus moved to insert the words "in executive branch."

Motion seconded and carried.

The Committee adjourned upon motion to meet Thursday, July 10 at 10:00 A.M.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 8, 1947

(Afternoon session)

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

PRESENT: Barus, Eggers, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: The meeting will please come to order.

The Committee will return to the discussion on pardon and parole. Mr. William Miller has submitted a tentative draft.¹

MR. GEORGE H. WALTON: *Moved to include "treason" in Section II, paragraph 1; and to add the first sentence of paragraph 2 to paragraph 1, leaving the second paragraph to read: "Paroles shall be granted as may be provided by law." Motion seconded.*

MR. J. SPENCER SMITH: *Asked why "treason" and "impeachment" should be excluded from the Governor's power of clemency.*

MR. WALTON: *Replied that in his opinion treason should never be pardoned and that impeachment is a special kind of trial within the jurisdiction of the Legislature, in which the Governor should not be permitted to have a voice.*

MRS. JANE E. BARUS: *Moved to change the wording of Section II, paragraph 2, to conform to the motion made by Senator Barton, as follows: "A system of paroles shall be established by law." Motion seconded and carried.*

MR. WALTON: *Moved the approval of Section III of the tentative draft. Motion seconded.*

MR. SMITH: *Moved to amend by substituting the words "armed forces" for "militia." After a long discussion on wording, Mr. Smith withdrew his amendment.*

MR. DAVID YOUNG, 3d: *Moved the approval of the original draft. Motion seconded and carried.*

The Committee took up the discussion of Section IV, paragraph 1, relating to the principal departments.

MRS. BARUS: *Raised a question about the clause "so far as practicable" in the sentence directing that the functions of govern-*

¹ The material in italics which follows appeared in the record in summarized form.

ment be allocated in the departments according to their major purposes. Discussion.

MR. WILLIAM MILLER: I think that what the Senator said is true to the extent that you do create a question for the future as to what the Constitution means. On the other hand, there are two things to consider. First, you protect the Legislature in the sense that when these acts have been passed it is a perfectly good answer, if Mr. A wants to be in some department where he doesn't belong, to say he can't do that. Second, when you prescribe the number of departments you have only done part of the job; all of the agencies could be put into one department, leaving only one agency for each of the other 19. That is carrying it to a ridiculous extreme. The only thing to do is to set out the manner in which the mandate shall be executed. There is a practical way out which I think would meet the objection.

MR. SPENCER MILLER, JR.: Isn't it true, Mr. Miller, that when you use the words "major purposes," that leaves discretion entirely to the Legislature?

MR. WILLIAM MILLER: I think the reason is, of course, that some agencies have more than one purpose.

MR. FRANK S. FARLEY: The Legislature would determine which would be "major purposes" on which the classification of departments would be based. I move to end the paragraph with "principal departments," and delete the rest.

CHAIRMAN: Is there a second to the motion?

MR. LEWIS G. HANSEN: Second the motion.

CHAIRMAN: All in favor?

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

You understand that as to Section IV, paragraph 1, there will be added on that the sentence that we voted on before.

Will you read it, Mr. Miller?

MRS. BARUS: Give him the power to appoint such state officers as he may select—

MR. WILLIAM MILLER *(reading)*:

"Temporary commissions for special purposes may, however, be created by law and need not be allocated within principal departments."

CHAIRMAN: My reaction to that would be, how "temporary" is "temporary"?

MR. WILLIAM MILLER: That language is used in the New York Constitution and they make it temporary by giving a commission a fixed term and then permitting renewal. It is necessary, for

example, with a special commission for the study of legislative problems, that it should not come within a department; and yet somebody might argue that the commission is an executive agency and not a legislative agency. Our Commission on Statutes, which is a first-class legislative agency, does not have to be allocated within one of the 20 departments.

MR. YOUNG: I move that the wording of the New York Constitution be taken.

MR. FARLEY: Second the motion.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

Before we go further with Section IV—yesterday, at the office, Mr. Condit, from Newton, Sussex County, called up and said that he had been requested to represent the Motor Vehicle Agents' Association of New Jersey to present a petition to us. I told him he could come here at 3:00 o'clock. He is here, so with your permission, I will ask him to come in.

*(Chairman Van Alstyne left the committee room
and returned shortly thereafter)*

CHAIRMAN: I talked to the motor vehicle gentleman and he asked me a few questions. I answered them and he said they didn't need to come before us. You should all know what happened. If you disagree with me, speak up and I will have them come in. They simply wanted to know if we were contemplating any change whatsoever in the Motor Vehicle Department. I said we hadn't even discussed the Motor Vehicle Department. We weren't discussing individual departments as such, but discussing departments in general. The only exception we had made was that where the single head of a department was, by law, a board or commission, then that board or commission would be appointed by the Governor with the consent of the Senate, and so forth. They said, "You haven't considered how the Commissioner of Motor Vehicles would be appointed?" I said, "As it is set up now, he would be appointed by the Governor." They said they didn't think they needed to come before us. Is there anybody who disagrees with my explanation?

MR. YOUNG: Very good.

MR. SPENCER MILLER, JR.: Mr. Chairman, is it proper to ask whether they seemed to be satisfied and would support us on that basis?

CHAIRMAN: They seemed to be exceedingly happy about the whole situation.

Let's take up the question of succession. Have we got this before us—Section 4?

MR. FARLEY: We're ready to dispose of it.

MR. FRANK H. EGGERS: I think, Mr. Chairman, we should take up the matter of succession inasmuch as it was announced this morning that it would be taken up at 2:00 o'clock this afternoon.

CHAIRMAN: Did I say 2:00 o'clock this afternoon?

MR. EGGERS: I think there are a number of people who want to do it, so let's do it.

MR. MILTON A. FELLER: May I make a suggestion, Mr. Chairman, that we handle this matter separately? First, let's vote on whether or not the Committee feels a Governor should succeed himself, and if that passes then decide whether it is to be for a certain definite period or indefinite period.

CHAIRMAN: Let's have a motion.

MR. FELLER: I make a motion the Committee decide now whether or not the Governor should be permitted to succeed himself.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

MR. WILLIAM MILLER: I have drafts. Would you like them placed in the discussion?

CHAIRMAN: What do you mean?

MR. WILLIAM MILLER: Drafts supplied last week indicating conditions in the general language you would be faced with.

CHAIRMAN: From what point of view?

MR. FARLEY: We have listened to all the Governors and Mrs. Barus was kind enough to summarize the subject matter which they submitted, emphasizing matters of importance; and we have Governor Edge's recommendation before us in addition to his letter. I think we are conversant with the divergent viewpoints. It is now time to submit the question. I would like discussion to proceed along that line.

CHAIRMAN: Will someone make a motion?

MR. FARLEY: I move that the Governor be permitted to succeed himself.

MRS. BARUS: Second the motion.

CHAIRMAN: Time for discussion.

MR. EGGERS: In what way is the motion phrased—that he can succeed himself indefinitely?

MR. FARLEY: May I say that this is a motion introduced on the suggestion of Judge Feller—that the Governor have the power to succeed himself. A second motion will be whether succession

should be limited or not. The present motion is merely on the right to succeed himself.

MR. SPENCER MILLER, JR.: I was just wondering if Senator Farley, to be even more specific, would make it "immediately to succeed himself." I say that because there is one state where a man may not succeed himself even after a lapse of a term. I would support his amendment that the Governor be permitted immediately to succeed himself.

MR. FARLEY: I accept that.

CHAIRMAN: Further discussion?

MR. YOUNG: I would like to know if a man were to leave that office today, whether in 10 or 20 years from now he couldn't be re-elected?

MRS. BARUS: A Governor can succeed himself now, in a sense, but not immediately.

MR. SPENCER MILLER, JR.: The purpose of this is to remove the bar of immediate ineligibility.

MR. FARLEY: May I suggest for the record that the word be "may," so that it will not be construed as a bar presently or hereafter.

MR. SPENCER MILLER, JR.: Perhaps you want to defer that until we get into the major question. I take it this is a preliminary question. When we get into the major question, we would like to discuss the matter.

MR. YOUNG: I have only a brief statement to make, and that is one of the things that concerns me about the matter of succession which I gather the Committee is in favor of. We are in the process of making the Governor a very powerful gentleman. In fact, he will undoubtedly be one of the most powerful Governors of any of the 48 governors. In his own sphere, aside from the control of the military forces, I think he will be almost more powerful than the President of the United States. He will appoint all the law enforcement officers and all of the judiciary. He will be Commander-in-Chief of all the armed forces of the State. He will appoint his own Cabinet for the most part. In two terms of four years each he will appoint every judge, every prosecutor, and certainly will have appointed the senior military officers, and naturally all of his own Cabinet, and a large percentage of the commissioners and boards, and so forth. I think we ought to consider very, very carefully whether we want to put that much power in the hands of a man for a period of eight years.

MR. WALTON: You made a statement, I think, that a Governor in eight years will appoint all the judicial officers of the State. That, of course, depends on what the judicial arrangement may be.

MR. YOUNG: I accept the correction. That's right.

MR. FELLER: I don't quite agree that the Governor, as far as this State is concerned, is going to have more power than the President of the United States. I think the power will be relatively equal, and no one ever objected to a President running for reelection. Anyway, that objection developed later when one man was running for more than two terms.

MR. EGGERS: He should at least be permitted to go before the people and have his policies endorsed or rejected.

MR. FARLEY: There is no doubt that the power of the Governor will be increased, and likewise the power of the Legislature will be increased. I point to the statement of Governor Driscoll that the present Constitution provides that in cases of vacancy the Governor shall have the power to fill the vacancy until the next election. Here there's a grant of power to the Legislature to advise and consent in the filling of these interim vacancies.

You will see that all through this program there has been a tradition, or an apparent tradition rather, of giving greater power to the Legislature—basically on the theory of checks and balances. It is true that one of the greatest weaknesses we have in the State of New Jersey is that the Governor cannot have his own way because he cannot have his own department heads. He is handcuffed and shackled by virtue of being in the position of not having his own Attorney-General, and other department heads. This is contrary to the theory that a Governor should have the right to have his colleagues and his administrative officers so that he can carry out his own policies.

Now, on the one hand we are apparently going to give greater power to the Governor, but likewise we are giving greater power to the Legislature for a check and balance. As long as we have them proportionately increased, I feel that it is in order and proper to give the Governor the right to succeed himself.

CHAIRMAN: Mr. Smith.

MR. SMITH: There is one point that I would like to throw on the table for consideration. It is that, after all, if you give the Governor an opportunity of staying in office for eight years, you deny to a good many men who might be eligible for the Governorship and who are well qualified for it, an opportunity to aspire to it.

MR. SPENCER MILLER, JR.: It seems to me that the more men you can interest in public affairs, particularly in the office of Governor, the more you strengthen democracy, or the republican form of government. I still feel that the door should be open to men who are ambitious to serve the public; that men who have ideas and thoughts they would like to see carried out, have an opportunity to aspire to the office.

MR. YOUNG: I have had a great amount of concern about this.

I have thought a lot about the ideas expressed by both the present Governor and the past Governor and frankly, I hate to get into the position where I am siding with either one. I don't think I'm trying to put it on a personal basis but am trying to decide what I think is the right thing to do.

I agree with you, Mr. Chairman, that we are going a little bit far with the powers of the Governor. I hesitate, frankly, in trying to vote today on what I think is the correct answer to this, until I have a little clearer idea as to how far we are going with the Governor. Although a decision is supposed to be made today, I think this ought to be one of the last things we do, due to the fact that we do not have a clear picture of how far we are going with the powers of the Governor. I think that if we finish up everything and leave this for the last thing and have a clear view of the entire picture, we would be in a better position to decide the question.

MR. EGGERS: Mr. Chairman, this is in answer to the three arguments that have been given. First, your argument. I don't believe you intended to have the connotation placed on your words that might be placed upon them when you describe the powers of the Governor as a reason why he shouldn't have the right to succeed himself. In the first place, you described his powers of appointment and then you brought in that he is Commander-in-Chief of the military forces of the State, which would connote that by giving him these powers he would become a dictator and have the power through the military forces to perpetuate himself. Of course, I know that you didn't mean that at all. And that wouldn't be an argument against the Governor succeeding himself because he could not call out the military forces except in the case of insurrection or trouble within the State.

In answering Commissioner Smith, as far as barring any legitimate aspirant for the office of Governor, this is a democratic form of government, or republican form, or whatever you want to call it. Any aspirant has the right to oppose the Governor for his second term. If the people are satisfied with his administration of office during the first term, they reelect him. If they are not, if they believe that the man who is opposing him can do better in the office, they will elect him. That should dispose of that argument. It doesn't limit the number of aspirants who might run to oppose the Governor for a second term.

As to Senator Young's argument, we agreed here that we would first dispose of all the technical terms of the Articles that come within our purview. That we have done. We now have the tentative draft before us and we have not yet considered the question of succession, which must be good or I am going to withdraw it, according to our agreement. That's the reason it is up today. As I see it,

there is no legitimate reason why, under the form of government we have today, a Governor should not succeed himself and, at the same time, be given sufficient power to make him a good Governor and responsible to the people. That is our form of government. The more powers we give him, the more responsibility he has to the people of the State and the more he has to do his job the way they want him to do it. If he doesn't do it that way, he will not be re-elected for a second term.

MRS. BARUS: You shouldn't fear power, but you should fear irresponsible power. To my mind the trouble now is that there is no one upon whom the responsibility can fairly be put. It seems to me to be a good principle when someone is running a business to give him clear-cut authority and then say this is your job and this is your responsibility. I don't think that power that is clearly accountable for is dangerous.

MR. SPENCER MILLER, JR.: I think that in the discussion we are presently having on the term of the Governor, there is a problem which Senator Young has referred to, namely, the question of balance. I think that matter of balance is a highly important matter in the whole development of sound administrative as well as sound democratic government. There is a difficulty, obviously, in dealing with a matter like the term of Governor until you have defined in precise language not only all of the powers he is to have, but also what powers are to be vested in the Judiciary, and what powers are to be vested in the Legislative Branch of the Government. We are always in that position because you cannot operate on a unilateral basis. You have to concede that Constitution-making is a task not only of defining the functions of one branch of the government but of determining the balanced relationship with the other two branches of government.

It has been said here in some of the briefs we have before us that the Governor, if he had the power of succeeding himself, would become the most powerful Governor in the United States. I don't think that careful documented research would substantiate that statement. The studies that have been made by the Council of State Governments and other persons who have been operating in this field point to two or three rather significant facts. In the first place, in the recent constitutions that have been developed, not a single one has incorporated within its provisions a provision for ineligibility. This trend is clearly in the direction of permitting the chief executive to succeed himself. Consequently, if you examine the number of states that at the present time deny to the governor the right of succession, you will find they are distinctly in the minority as compared with those which give powers of succession. In some states, Oregon for example, there have been set up certain limitations in

permitting a governor to succeed himself more than once within a period of 12 years.

I think we have to come back to this other point, that if the Judiciary Committee does the kind of conscientious job which we have every reason to believe it will do—it has been stated by some who have been working on the Judiciary Article that the actual number of judicial appointments the Governor might make, might be reduced as much as 60 to 70 per cent; you will not have the great number of judges appointed as we have in the past—we will greatly limit the number of gubernatorial appointments so far as the judiciary is concerned.

I have read with very much interest and with very great profit, not only the brief which has been submitted by Governor Edge, but the other material. I think that no person can waive aside lightly the authority and experience with which these men speak. It has been suggested, for example, that if we were going to give the right of succession that the Governor would have a very large number of appointments. I have taken occasion to make an analysis of the gubernatorial appointments made by Governor Dewey in the last four years of his term and the number of gubernatorial appointments made by Governor Edison and by Governor Edge, as well as prospective appointments to be made by Governor Driscoll in his three years. It is a very interesting thing that in comparison with New York State, while we are here making provision that only heads of departments can be appointed by the Governor, in that State not only can the heads of departments be appointed but also the deputies. Of course, in New York State the Governor does not appoint the judiciary, although he has powers under the Constitution to fill vacancies as well as to make other local appointments. A comparison of the appointments that were in fact made by Governor Dewey over a period of time as contrasted with those made by Governors Edison and Edge and prospectively to be made by Governor Driscoll, indicate that some of our apprehensions about the Governor of New Jersey having such excessive power are, I think, without very substantial foundation.

Moreover, there is a point which I think Mrs. Barus has made. I think we have to be saying again and again and to have the courage to say to the people of the State of New Jersey what we are seeking to do in this Constitutional Convention. I hope our purpose in the document which is submitted to the people is to make power responsible. That, to me, is the essence of this problem today—to make power responsible. That is what we are seeking to do and that, in a very real sense, is the thing that is being achieved. Moreover, if we can maintain this principle of balance, which we sometimes describe under the head of checks and balances, I have no doubt we shall be

able to achieve an orderly type of distribution of power.

Then there is the other implication which I think is important, namely, that the power that a man is called upon to exercise is itself an incentive. Men rise to the kind of responsibilities which are vested in them. It is ancient wisdom, if you will, that the way to make men responsible is to give them responsibility. I think we shall see, I think there was a suggestion made, that there will be an elevation in the type of men who become Governors in the State of New Jersey over the years under this kind of Constitution. New York State admittedly has provided for a strong executive and it has had a record of attracting to that post some men who have not only had very high administrative competence, but men who have given outstanding leadership. I believe that if we have the courage to make the Chief Executive of the State a responsible Chief Executive, we not only will be able to do what I think is the public expectation, but I think we can do it without serious impairment of what seems to me so essential, which is to achieve a sound balance among the divisions of government.

CHAIRMAN: Any further discussion?

MR. SMITH: I think this is not a matter of principle; it is a matter of impracticality. I come from a county and town in the northern part of the State. This question of responsible power sounds well, but if you will analyze the State of New Jersey, you will find it very difficult to carry that into execution throughout the State with the conditions that prevail as regards the public receiving information. I know this is so in my own county. This is not theory; it is a practical fact, demonstrated in meeting after meeting, that regardless of their position in life, citizens know practically nothing about the administration of the State. In fact, it is safe to say that some people do not even know who the Governor of the State is, or what the name of their Senator is.

So far as my good friend, the Mayor, is concerned and with reference to what he said about succession in office, I am not going to ask him a question. But I think it is sufficient for all of us who know that neither party would attempt to aspire to the office of Governor if the occupant of the office wanted to succeed himself and was acceptable to the powers that be and the particular party that he belonged to. In this whole discussion and as a matter of principle, I know how I would vote. As a matter of opinion, I know that you can argue both sides equally well. It is a question of being practical. Personally, I don't think the State is going to the bow-wows with one term or two terms, from the point of view of our decisions. It is a matter of opinion. We arrive at our opinion from our experience.

CHAIRMAN: All in favor of the motion say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: Motion carried.

MR. FARLEY: Mr. Chairman, I move that the Governor in succeeding himself be limited to two terms.

CHAIRMAN: Two successive terms?

MR. FARLEY: Yes.

MR. YOUNG: Second the motion.

MR. FARLEY: I think two terms. It may be a bar for future terms.

MR. YOUNG: Second that motion.

MRS. BARUS: You mean two terms?

MR. FARLEY: Whether successive or otherwise—yes.

MR. EGGERS: Mr. Chairman, I would like to offer an amendment to that motion: that the Governor be permitted to succeed himself indefinitely until such time as the people themselves vote him out.

MR. HANSEN: Second that amendment, Mr. Chairman.

MR. FARLEY: I can't accept the amendment, Mr. Chairman.

CHAIRMAN: I think that is a little difficult. I think we will have to let the motion stand as it is and vote it down. Vote on this one and if this is voted down, you make the other one.

MR. EGGERS: If we adopt this motion limiting the Governor to two terms, then how are we also going to vote on my motion?

CHAIRMAN: The thing to do is defeat this motion. I am trying to be fair and I think it isn't right to let the amendment stand.

MR. FARLEY: If he so desires, I will withdraw my motion and the Mayor can make his own motion.

MR. EGGERS: All right, that would be logical.

MRS. BARUS: What is your motion, again?

MR. EGGERS: That the Governor be permitted to succeed himself indefinitely.

MR. SMITH: I think the Mayor's motion is very logical. If you give the Governor the right to succeed himself because he is a good Governor, why not let him stay there? I am in favor of the motion. Let him succeed himself as often as he can. The question of power doesn't enter into it if the responsibility of power is present. Be consistent.

MR. FELLER: I disagree. Limiting him to one term is perhaps going to one extreme. Giving him the right to unlimited succession is perhaps going to the other extreme. The longer he is in office, the more opportunities he is going to have. More appointees are going

to retire or die, and he is going to have more appointments to make.

MR. YOUNG: You are coming right back and saying you aren't afraid of democracy after the first term, but only after the second term. The Constitution is supposed to consist of fundamental principles, regardless of the desires or functions of temporary majorities. Nobody objected to limiting the President to two terms; there was never any objection to that. Most of the objection came when he was running for third and fourth terms. In fact, there is a proposed amendment to the Federal Constitution now, limiting succession.

MR. EGGERS: My thought in proposing such a motion is that all powers of the government are inherent in the people of this State and of the United States. They would see they could elect people to office who would be responsible to them, and then could determine whether they should be left in office or not.

We are sitting here as a Committee and making up our minds that by limiting the Governor to two terms we have answered the will of the people. Whether they want the man or not, we are saying to them, "You can't have him." He may be a good Governor; he may be doing a good job for this State, just as a President may be doing a good job for the country. We have no right to substitute our judgment for the judgment of the people of this State, by saying this man can remain in office only for two terms, because we are afraid he will become so popular he will stay in for two, three, or four terms. The people can determine whether or not they want him for four or five or six terms. That's their prerogative. This is a people's government. This is a people's Convention. We have no right to substitute our judgment for theirs.

MR. YOUNG: I think there is a very fundamental point involved, whether this is approved or not. I don't like it that way but it is heading in that direction. I want to know if there is a possibility of leaving the section as it is and by a separate vote of the people let them determine, as a separate item, whether they want no succession, or one term, or unlimited terms in the future. Could that be done?

MR. WILLIAM MILLER: Do you want the enabling act?

MR. YOUNG: I don't want to go back to the vote of the Committee because I was over-ridden, but it seems to me that this Committee—as suggested a few minutes ago, and think I was right—before we meet again we might give some thought to the section as it is in the present Constitution and have a separate vote of the people on the succession question.

MR. WILLIAM MILLER: May I say, you have to refer it to the Committee on Submission and Address to the People, as well as this Committee.

CHAIRMAN: The committee chairmen had lunch together today and that subject came up in connection with a number of obviously

controversial points: the gambling issue, the segregation of funds or general fund situation, both of which are very controversial and, of course, could not be decided. We had a general discussion as to how many of these controversial points could be put up to the people along with the Constitution as a whole, and yet not have them so confused that they wouldn't know what they were voting for. I throw that out as one of the problems confronting the Convention as a whole.

MR. YOUNG: I had an object in mind in trying to draft and submit a Constitution which would accomplish some things that a number of us would like to see accomplished. But I also see that we are going to work to a point where we are going to have various groups getting out and working against the proposed Constitution. I think if we can eliminate that, every effort of this Committee, and of all the other Committees, should be directed to doing so.

MR. EGGERS: I don't think we should concern ourselves with what groups get out and work for or against the Constitution. We should try to devise a document that is the best we can give, a document that is going to last in this State. One of the things that we want is to get good Governors and to be able to keep them when they do a good job. New York State has had experience. They have elected governors for successive terms. Al Smith was elected for four terms. Herbert Lehman was reelected three or four times. Tom Dewey has been reelected. These men had personal integrity. They respected the will of the people and they did their job in the best manner they could. The same thing will happen in New Jersey. If we are going to say to the people of New Jersey, "No matter whom you pick, no matter what kind of man he is, you are going to be restricted as to the number of terms you can give him," the people will not want that kind of a Constitution. You can't work their will that way.

I am not concerned as to how it is going to be submitted to the people—piecemeal, section by section, or as a whole. But I do say, earnestly and sincerely, that if the people are told that they can only vote for a Governor for two terms under the Constitution, they are going to feel that their will has been thwarted and they are likely to do what Senator Young says, turn it down.

MR. FELLER: New York State has provided for four-year terms only since 1938. Smith had two-year terms.

MR. EGGERS: It doesn't matter about the number of years; it's the successive terms. Al Smith could have run many years later and could have been elected. It doesn't matter whether it is a two-year term or more. Tom Dewey can run as long as he wants. Herbert Lehman could have run.

CHAIRMAN: Any further discussion?

MR. SPENCER MILLER, JR.: I am wondering whether we, in our discussion, might not be confusing what might be called "the custom of the Constitution" with this provision. It is the "custom of the Constitution" that has prevented President after President down through the years in the United States from running more than two terms, up to the time of President Roosevelt. I take it that whether the Federal Government passes a law or not, we are likely to refer to the custom of two terms as the limit of Presidential succession, the exception, perhaps, proving the rule. I think that if we had a principle of unlimited succession in the State Constitution the same custom would come to prevail here. We might have exceptions, but on the other hand I think it is quite likely that the people of the State, in the exercise of their sovereign function, might be of the opinion that a Governor who had discharged his trust well for a period of perhaps eight years, had not performed all the services they wished of him.

I think that if you believe in the principle of succession, the setting up of a limitation on the number of times a Governor can succeed himself in a sense flies in the face of logic. On the other hand, I think there is a merit to the suggestion just made. The Committee might want to give consideration to the fact that this, after all, is a document which not only must be submitted to the people, but must derive its support from the people. For that reason, I think there is some merit to the proposal that, having adopted the principle of succession, this Committee might very seriously consider whether this question of a Governor succeeding himself more than once—whether you would have indefinite succession or limited succession—that question might very well be presented to the people for their consideration.

But we have to answer this question ultimately as to whether or not we are going to trust in the democratic process. If we do, we have to perhaps realize with Mr. Lincoln that the people will wobble a lot but will ultimately wobble correctly. We are going to have the kind of Governor that the intelligence and informed opinion of this table is going to support. For that reason, I think we might very seriously give consideration to the fact that this issue, I agree with Mayor Eggers, goes to the very heart of the democratic process. We might submit that question to the people as one of the basic issues. Having determined that we believe in succession, I think we have taken a very important step forward. We might, therefore, say to the people of the State: "We want your instructions as to how many times you want the Governor to succeed himself. If you want him to succeed himself indefinitely, that will be the will not only of the people but it will be the law of the State." On the other hand, if the people determine that they believe in the principle of limited suc-

cession, we would have tested the sentiment of the electorate. There is real merit to this as a proposal to submit to the populace.

MR. EGGERS: I haven't any objection to what Commissioner Miller has set forth. I think this Committee must take this responsibility and must decide whether we are to have succession indefinitely or not. I am perfectly willing that this Committee, after deciding the question, should submit to the Committee on Submission and Address to the People the proposition that this question be submitted to the people separately, if necessary, if there is any thought that the provision might endanger this Constitution. In my mind it will not, but having it submitted separately is perfectly all right with me because I have confidence in what the people will do with it.

MR. FARLEY: May I make a suggestion, Mr. Chairman? Determine first whether or not a separate vote would be the policy of this Convention. If this is so, then your vote may change. I may change my viewpoint on it. If it is going to be by a separate vote of the people, it may be advisable.

CHAIRMAN: You mean, to take it up with the Chairman of the Committee?

MR. FARLEY: Whoever has the authority on submission.

CHAIRMAN: This Committee has the authority to recommend to the Committee on Submission and Address to the People.

MR. FARLEY: If the Committee on Submission and Address to the People decides that this document must be submitted *in toto*, that the people must accept all or nothing, I am perfectly willing on the floor to fight that they give this separate consideration. I don't think they're afraid to let it go before the people. By deciding one way or the other we are showing responsibility and we show that we have the confidence in the people that we should have. They sent us here to do a job. Let's try to do it, whether we're right or wrong. I think we're right.

MRS. BARUS: I believe we are entitled to rewrite our drafts, are we not, in the light of the hearings? I personally feel that we ought to vote and pass this motion, put it in the minutes of the Convention as a whole with a limited succession, and we will have a chance to reconsider when the public hearings are held.

MR. FELLER: Mr. Chairman, I would be in favor of unlimited succession rather than no succession at all. My personal feeling, since we are on record as favoring succession, is that it should be limited. The minority of those who appeared favored unlimited succession. It is a controversial matter and I think your suggestion is a very fair one. Let the people decide just what kind of succession they want, if it can be worked out that way.

MR. FARLEY: I think it should be brought to the general as-

sembly's attention, to give it an opportunity to think about the matter and make some general disposition.

COMMITTEE MEMBER: You mean the Convention?

MR. FARLEY: Yes, the Convention.

MR. EGGERS: Mr. Chairman. According to our agreement here—what we decided upon earlier in our session—we agreed that we would go over these Articles and decide what we wanted as a Committee; having drawn them up, we would then circulate them throughout the State to various groups and to various people, and there would be a public hearing on them to determine what our final draft might be. Now, I think if we adopted my motion calling for unlimited succession on the part of the Governor, the people of the State will be apprised of that. What we adopt here will be circulated throughout the State. We can call a public hearing on it. We will get plenty of reaction, as Mrs. Barus says. It will also come before the general Convention when we bring it out in our report, and it will have plenty of discussion then. We can also determine then whether it shall be submitted separately or as a part of the one document to be voted on as a whole. Either way, it is voted on, I am confident of what the people are going to do, and either way, I don't think we should shirk our responsibility here.

MRS. BARUS: It seems to me that if we can't make up our minds, then how is the average citizen going to? After all, we are supposed to be the better informed and better able to make up our minds.

MR. FELLER: I would rather see Mayor Egger's motion carried unanimously than by a very close vote.

MR. EGGERS: There is nothing that irks people more than seeing somebody going down the middle aisle.

MR. HANSEN: I think that we are all agreed that the reason which prompted the proponents of the 1844 Constitution to limit the term of a Governor has been dissipated. I think we are all satisfied that those reasons, if they did apply at that time, don't apply today. What other reasons are there why a Governor shouldn't be permitted to succeed himself two or three or four times if the people want him to remain in that office? It seems to me that the same reasons are offered as were offered in the Constitution of 1844.

I think that what has been said here today, not only by Mayor Eggers and Commissioner Miller and the others who have voiced their sentiments, but as Governor Moore so eloquently said—I think that we can leave this matter to the good judgment of the people. We can conceive of the possibility of some calamity happening in this State at just the time when a new Governor is to be elected. The Governor in office at the time would naturally be doing everything he could to alleviate the situation. He would put into effect certain

rules and certain remedies, and it doesn't seem to me that the people should on an occasion of that sort, a real crisis, which could possibly happen—not possibly, its more than likely to happen—be restrained. Why should they be barred from keeping in office the man who is protecting them at that time, a man who is doing everything he possibly can to relieve the perilous situation then prevailing? Does it seem right that his policies should be terminated just because of a provision in the Constitution?

I think that the will of the people, as Commissioner Miller said, should guide us in this connection. The people will decide that for themselves. We have the benefit and experience of many other states to take into consideration. Personally, I see no more reason for limiting the Governor to two terms than to one term. If we are going to limit him, let us limit him; let us limit him the way he is now. If we agreed that that isn't right, then let him go on, let the people take care of the situation.

You might say the same thing about a mayor of a city, or any other officer. He has to account to the people, he has to run for reelection, and that matter can safely be left in the hands of the people. If the mayor of a certain city is doing a good job and he wants to run for reelection, the chances are the people will reelect him. If he isn't, and he sees fit to go before the people on his record, he should be permitted to do so. I think the whole history in the municipalities and the governing bodies of our State shows that the people, when they want to, can take the situation in hand.

Personally, I'm in favor of the motion to have no limit. Either have a limit for one term or have no limit at all. I'm not in favor of limiting the Governor or any other officer to one term. I think he should be permitted to remain in office at the will of the people.

MR. EGGERS: Mr. Chairman, just one more word. In the light of experience, we haven't anything to fear from the people. No matter how much succession we give the Governor or any other elected official, history in this country—in every municipality, in the states, and in the nation—has demonstrated that when the people decide that the man in office is not doing his job to the best of his ability or that he does not have the integrity that he should have in public office, they throw him out. History shows that. If we can safely leave it the way the framers of the original Constitution conceived our government to be, that all the powers of the government are inherent in the people, let us keep it that way.

CHAIRMAN: Any further discussion on this motion?

MR. SPENCER MILLER, JR.: Just for the record, I think it might be important to remind ourselves that 31 states in the Union provide no limit to the number of terms the Governor should succeed himself.

CHAIRMAN: Any further discussion or comment? The motion has been made and seconded that the Governor be allowed to succeed himself for an indefinite number of terms. All in favor please say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Chorus of "Noes")

CHAIRMAN: All in favor please raise your hands.

(Five in favor)

CHAIRMAN: Opposed?

(Five opposed)

COMMITTEE MEMBER: I think we should have our eleventh member present, and take it up at our next meeting.

MR. FARLEY: As matter of legal procedure, I do think that a matter as important as this one should be taken up with the Chairman of the Committee on the Legislative since we are running into a pocket veto. I believe that you had a conference with Senator O'Mara as to the disposition of the Legislative Committee?

CHAIRMAN: I took it up with Senator O'Mara and he was inclined to agree that a pocket veto should not be allowed and that they should put in some provision to that effect. He intended to take it up with his Committee but he hasn't been able to do so yet as they have been having public hearings. Anyway, it is before them for consideration.

I think this,—we should, so far as Senator O'Mara is concerned, wait until we have Senator Barton so that we can further discuss the succession question. We can then get away from this business of having such a close vote. In the case of a tie, the motion carries, I would respectfully call your attention to the fact that I have extended the same courtesy once before.

MR. SPENCER MILLER, JR.: May I ask this question? What is our decision as to referring final determination to the Committee on Submission and Address to the People? What would prevent our technician, or you, Mr. Chairman, from taking up with that Committee the possibility of submitting this question to the people as one of a half dozen questions which might properly be submitted to them? The very fact that we are divided is an indication of the fact that it is the kind of a question on which even men of good will, who are concerned with this thing, would very much be helped by having some indication of the will of the people. Seriously, I think that this is the kind of thing that should be among the important issues that ought to be submitted. This is the kind of question which very probably should be put to a public referendum; it should be one of the questions put to the electorate in November.

CHAIRMAN: Why don't you make a motion, instructing me as the Chairman . . .

MR. SPENCER MILLER, JR.: I so move, Mr. Chairman, that the Chairman of our Committee confer with the appropriate Committee Chairman—I suppose the Chairman of the Committee on Submission and Address to the People—as to whether or not they would give consideration to this matter as one of the public questions to be submitted along with the public document.

COMMITTEE MEMBER: Do you mean the question whether gubernatorial succession should be limited or unlimited?

MR. SPENCER MILLER, JR.: Yes.

CHAIRMAN: Is that seconded?

(Motion seconded)

CHAIRMAN: The vote was unanimous on succession; it was tied on indefinite succession. Therefore, the question raised by Commissioner Miller is, as I see it, that I should confer with the Chairman of the Committee on Submission and Address to the People with respect to unlimited or limited succession.

MR. FARLEY: As a matter of procedure, I would make a motion that the term of the Governor be limited to two terms.

CHAIRMAN: There is a motion on the floor.

MR. FARLEY: My motion may make that motion unnecessary.

CHAIRMAN: Would you be willing to withdraw your motion, Commissioner? *(Addressing a member)*: And your second?

MR. SPENCER MILLER, JR.: Yes.

CHAIRMAN: Senator Farley has made a motion that the Governor be limited to two successive terms.

COMMITTEE MEMBER: Seconded.

CHAIRMAN: It has been seconded. Is there any discussion?

MR. SMITH: I may be awfully dense, but I can't see the consistency of the motion. On the one hand you move that the Governor have two terms; then on the other hand you want to limit it to two terms.

CHAIRMAN: The motion, Mr. Smith, is to limit it to two terms.

MR. SMITH: One of the arguments advanced is that the people should have a right to reelect a Governor and that you must put power in the hands of the Governor. It seems to me that the responsibility rests with the public whether they want to have a Governor for three terms or four terms. It is a question to go before the public. I'd be perfectly willing to vote to limit it to one term and have no succession, but I think that the minute you vote to have succession, that it ought to be unlimited. I don't see the consistency of the two ideas. I would like to have that explained to me.

MR. FELLER: It is like a person who gets sick from under-

nourishment and then overeats and gets sick again. There is no happy medium.

MR. SMITH: If you have an emergency and at the time of the emergency you have a Governor who is carrying on as you want him to carry on, good judgment may dictate that he should be reelected. But no; the Constitution says "No." Right in the midst of the emergency, because of constitutional limitations, you have to call an election to elect someone who is untried, and you don't know how he would conduct that emergency. If the Governor was a good man, and he has carried on the responsibilities of power as he should, and he believes in democracy and the vote of the public, why do you want to put in a provision to prevent him from being elected? Now, if he is a bad man and his term has demonstrated that, you'll vote him out anyway. I just don't see . . . It just seems to be very inconsistent, that's all.

MR. FARLEY: Mr. Chairman, apparently by the way the vote turned out, this is a very controversial issue. There is, also, in this country a word called tradition which is basic and fundamental. It is so effective, in fact, that they now have before the Congress a movement to amend the present Constitution to limit the President to two terms. Apparently there has been an uprising back home attributable to tradition.

It is a question of viewpoint. I am of the opinion that it should be limited, not by virtue of the fact that the people have the right to select a man to succeed himself, but because of good, old American tradition.

MR. SMITH: Do you mind if I answer that? I think if you will take the time to study the reasons behind that, you will find one of the things right in the amendment to the Federal Constitution that caused a revulsion of feeling on the part of the public against allowing men to continue in power. The violation of the tradition—I don't want to go into the details, but I think if you'll study it you will find there is a very good reason why the public is aroused about giving the President more than two terms. That reason will not apply in the State of New Jersey.

MR. EGGERS: As I understand it, a motion has been introduced by Commissioner Miller that you be directed to talk to the Chairman.

CHAIRMAN: That motion has been withdrawn.

MR. EGGERS: We rule by majority, of course. That's one of the traditions Senator Farley is talking about. We've had a tie vote on the question whether we should have unlimited succession or not. If Commissioner Miller's motion stands that you be directed to talk to the Chairman of the Committee on Submission and Address to the People as to whether the people can have the alternative of vot-

ing on this—whether it be for two terms or unlimited succession—and if Senator Farley's motion prevails that the majority of the Committee votes for two terms, that's perfectly all right. The Committee's decision would then be by a majority of its members—that in their opinion two terms is sufficient. Nevertheless, you give the people their inherent right to decide for themselves whether the Committee and the Convention are right, or whether they are right—whether it should be unlimited succession or two terms. Under those conditions, I see nothing wrong with either Senator Farley's motion or Commissioner Miller's, as long as the ultimate decision as to what is decided here is left to the people to decide for themselves, separately.

MR. WALTON: Mr. Chairman, I would like to ask one question on the motion that is before us. Do I understand that this limits a man to holding the governorship for two terms, and that furthermore he is ineligible to be Governor again, no matter whether the people want him or not? Even within six or eight years?

MR. FELLER: If the motion were amended the vote would be the same, because it's just the opposite of the original motion.

MR. WALTON: I think we should put this motion on the table until we can find out whether we can go ahead with it, and get all the details.

CHAIRMAN: Mayor Eggers now asks the courtesy of having us consider his motion. Is there any further discussion on the motion?

MRS. BARUS: The motion is that the Governor shall be limited to two terms in a lifetime.

CHAIRMAN: All in favor of this motion, please raise their hands.

(Five in favor)

CHAIRMAN: Opposed?

(Five opposed)

CHAIRMAN: We're making great progress!

MR. SPENCER MILLER, JR.: Mr. Chairman, may I make a suggestion—that you as Chairman of the Executive Committee confer with the Committee on Submission and Address to the People to determine whether or not this matter, which is now clearly demonstrated to be an issue, could be included as one of the public questions to be submitted to the people, along with the Constitution, in November?

MR. EGGERS: I second the motion.

CHAIRMAN: All in favor please say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Carried.

MRS. BARUS: Mr. Chairman, isn't it a mistake to decide to do

that without further thought, for two reasons: first, I think it is the Convention's business to discuss the question as a whole, rather than ours, to decide which one should be submitted separately; and secondly, it seems to me that we may find ourselves in a situation where the Constitution really isn't written completely? You are putting too many of these things up for popular vote. I believe we are, in a sense, representing the people; we have a charge upon us to make up our minds on some of these things. If this were the only thing, it wouldn't be so bad, but suppose we get it up to eight or ten? In the end, we are ducking all of the main questions. I think that would be very weak and would have a very bad effect, and I am extremely reluctant about it.

CHAIRMAN: As I understand this motion, it is simply a formal instruction to me to discuss this matter with the Chairman of the Committee on Submission and Address to the People. In other words, it doesn't contemplate what I think you have in mind.

MR. FARLEY: I would like to make a motion that where the Legislature passes an act giving the people the right to create something by referendum, the Legislature should likewise, in the same act, give them the same power to take it away.

MRS. BARUS: Have a referendum on it, in other words?

CHAIRMAN: Any discussion?

MR. SMITH: Mr. Chairman, I think that we ought to consider this motion very carefully. My conception of our form of government is that of a republic, which is delegated power. To me there is a vast difference between placing a constitutional question on the ballot for the public to vote on, and the question before us now, whether we are going to give the Governor the right to succeed himself or not. That is the question which is independent of any legislation. It is a question of the fundamental right of the public to say whether they want a Governor to continue for more than one term, or limit him to one term. When you come to matters of legislation, then you are getting into a democracy, or a form of democracy, and you are getting away from a republic because the public cannot possibly be informed on all the questions that enter into the question of legislation.

MR. FARLEY: I think you miss my point. This would be a limitation on the Legislature that any law passed giving the people the power to create something by legislation should give them the same right to take it away. Fundamentally and basically, this right is inherent in the people.

MR. WALTON: The point might be very well taken, but it would seem to me that that is a legislative matter and it should be before the Legislative Committee. Since Senator Farley has talked along those lines, he should present the proposal through the usual

channels, rather than bring it up before the Executive Committee.

MR. WILLIAM MILLER: I express no opinion on the general proposal, but I think it will probably be necessary to work it out so that it applies only to a specific field.

CHAIRMAN: I don't think we should go into too much discussion on this matter.

MR. SPENCER MILLER, JR.: Mr. Chairman, I move its reference to the Legislative Committee.

MR. FARLEY: The motion was that this Committee recommend it to the Legislative Committee.

CHAIRMAN: Is it seconded?

COMMITTEE MEMBER: I second the motion.

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

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered.

MR. EGGERS: On Commissioner Miller's motion that you submit to the Committee on Submission and Address to the People the question of whether the question of limited or unlimited succession could be voted on in the alternative. Suppose the Chairman of that Committee takes the view that they will not recommend to the Convention that that practice be followed, then what is this Committee to do with reference to the question?

CHAIRMAN: We have a perfect right, under the rules, to take it to the floor, either as a Committee or as an individual.

MRS. BARUS: I would suggest that there is nothing that limits us from bringing it to the Convention, or any member of the Committee from bringing it to the Convention floor.

MR. EGGERS: Then I assume there would be two reports from the Committee on the question.

CHAIRMAN: Not necessarily. No one else is bound, but I bound myself, regardless of what anyone else does, not to hand in a minority report on any subject. I think one of the most important things in getting the Constitution through is to have the Committee as unanimous as possible. However, that doesn't bind anyone else.

MR. EGGERS: The only thing I'm thinking about is on this particular question. The Committee is divided evenly now for the first time. Of course we don't know what our proposal will be.

CHAIRMAN: As time goes on, it is perfectly possible, in the light of the arguments . . . I have changed my mind several times in the course of discussion, and I might change it again, or anybody else here might change theirs. I hate to think that we are all sitting around, frozen in our minds and with absolute determination as to

what our opinion is, regardless of any additional information or discussion.

MR. SPENCER MILLER, JR.: Mr. Chairman, might we not reserve a decision on this matter until you have reported to us, and then we will have a meeting with all the members of this Committee present? I have been a little embarrassed because we did not have one of our members present. I think we might, conceivably, suspend judgment until we get a report from you, and when we have the privilege of having Senator Barton present we might then review this question again with complete membership.

MR. FELLER: This vote is close enough. It's 6 to 5 either way, and it does become a controversial question. It should be settled on the floor of the Convention, and in the alternative form by the Legislature.

CHAIRMAN: I would hate to have a Committee make a report with a vote of 6 to 5. Even if I were on the winning side of the fence, I would hate to report it. I would like to put anything as close as that definitely up to the Convention.

Now, before we adjourn, let's decide when we are going to meet again, or—why do we have to adjourn? Let's keep on working! I'd like to get this work over with, and if it's agreeable with all of you, I would like to stay here and finish up.

MR. SPENCER MILLER, JR.: Mr. Chairman, if we are to stay on—and I would be in favor of staying on this afternoon—could we have about a ten-minute breather.

CHAIRMAN: All right, we will stay on until about 5:30 and finish up what we can. We will now have a five-minute rest.

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

CHAIRMAN: The meeting is called to order.

MR. WALTON: You were reporting to us on the question of taking up with the Legislative Committee the question of the Governor's veto of a bill after the Legislature had adjourned. I think that report was interrupted, was it not.

CHAIRMAN: I didn't understand so. I reported it, and I'll report again very briefly that I did discuss it with Senator O'Mara, and he personally agreed with me and said he would take it up with his Committee. But they have been holding public hearings most of the time since I spoke to him and the Committee has not yet acted on it.

MR. WALTON: Then there is no action that we can take at this time?

CHAIRMAN: No.

MR. FARLEY: Do you think we should take a vote here to give an expression of our viewpoint on the subject matter?

CHAIRMAN: Well, we did. We gave it before, and I was in-

structed to pass that word on to the Chairman of the Legislative Committee, and he personally agrees with us and is going to take it up with his Committee, but they haven't had time to act.

I have received this letter from General Powell, which was requested. If you will turn to the memorandum prepared, Section 3 concerning military, I will read the suggested military provisions prepared by Major General Powell. (*Reading*):

"1. The Legislature shall provide by law for enrolling, organizing, arming and maintaining the militia, of which the Governor shall be Commander-in-Chief."

I would think that we had covered that quite adequately in paragraph 1 of Section III. And, of course, the statement that the Governor shall be Commander-in-Chief has already been covered in another section under Executive. (*Continues reading*):

"2. All general officers, including the Adjutant-General and the Quartermaster-General, and all Admirals shall be nominated and appointed by the Governor with the advice and consent of the Senate. All other officers shall be appointed and commissioned by the Governor. All such appointments shall be made according to merit and fitness and as nearly as practicable upon such standards as now are or hereafter may be prescribed by the United States for officers of equivalent rank of the National Guard and Naval Militia.

3. No commissioned officer shall be removed from office other than by sentence of a court martial or by a board constituted and empowered by law, except that all general officers and Admirals may be suspended for cause by the Commander-in-Chief. All officers will be retired upon reaching the age now or hereafter prescribed for retirement of officers of equivalent rank in the United States armed forces."

As far as I'm concerned, the last two paragraphs should be statute and not Constitution.

MRS. BARUS: The tenure of office and also the fact that the Governor must appoint his Chief-of-Staff from among the senior militia officers. . . . He said that; didn't he get it in?

CHAIRMAN: He said that in his testimony, but he didn't get it in here. He says all general officers, including the Adjutant-General, and the Quartermaster-General, and Admirals, shall be appointed by the Governor with the advice and the consent of the Senate. All other officers shall be appointed and commissioned by the Governor. He doesn't talk about his staff here. Unless I hear any comment to the contrary, we shall let Mr. Miller's draft stand as has already been approved. I just want to report that we have read General Powell's letter. He has a discussion, subsequently, in which he talks about how he would "like to strengthen 2 to insure compliance with federal military and naval standards." I think that ought to be done by the Legislature. (*Continues reading*):

"Paragraph 3 thereof has been eliminated since it simply defines an inherent power of the Commander-in-Chief and it is anticipated that its inclusion might be construed to permit the appointment of civilians or officers with insufficient experience.

3. Paragraph 3 of this memo insures the same tenure as enjoyed by officers of the regular Army, Navy and also the Army, Navy and Marine Corps Reserve officers. Of the hundreds of officers concerned probably less than a score are on full-time duty; the vast majority are serving at great personal sacrifice and all are certainly entitled to the same tenure as officers of the other components of the armed forces of the United States.

4. The maintenance of morale and *esprit de corps* demand the inclusion in the Constitution of established standards of merit and proficiency, insurance . . ."

I think that's all legislative myself.

Will you turn to the first page of the memorandum prepared by Mr. Miller? We had gotten down to Section IV, paragraph 2. I had read the thing before. I would like to have a motion or discussion with respect to paragraph 2 of Section IV.

MR. SPENCER MILLER, JR.: Mr. Chairman, was it not our understanding that the provisions with reference to a Cabinet should be a substitute for paragraph 2, following paragraph 1?

CHAIRMAN: No, that wasn't it Commissioner. We discussed that this morning. Mr. Miller pointed out that we had left out one sentence which we agreed to in paragraph 1, and the matter of the Cabinet, which we also agreed would come in as a separate paragraph, No. 5.

MR. SMITH: I move the adoption.

COMMITTEE MEMBER: I second it.

CHAIRMAN: Any discussion on paragraph 2, Section IV? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: It is so ordered . . . Any discussion on paragraph 3?

MRS. BARUS: What exactly does "removable for cause" mean?

MR. WILLIAM MILLER: By saying "removable for cause," you do leave an avenue of review in the courts. It means any substantial reason, other than caprice. It's an odd way to define it. For example, failure to account for funds.

MRS. BARUS: Does misfeasance mean neglect?

MR. WILLIAM MILLER: Yes, neglect of duty or deliberate refusal to perform duties as required. Anything which is a failure to do the job.

CHAIRMAN: Any further discussion?

MRS. BARUS: I move its adoption.

MR. SMITH: I second the motion.

MR. SPENCER MILLER, JR.: Are we now discussing paragraph 3?

CHAIRMAN: That is correct.

MR. SPENCER MILLER, JR.: The question which I raise in

connection with this—I think this has been so designed as to give special expression to the Department of Agriculture and the Department of Institutions and Agencies?

MR. WILLIAM MILLER: It will meet the requirements for the Department of Institutions and Agencies as now set up by law. It will partially meet the requirements of the Department of Agriculture as it is now set up by law. In this respect, the Secretary of Agriculture could continue to be appointed more or less as he now is by the Board; but if the Board has to be appointed, with the advice and consent of the Senate, that would require a change in the present statute, since the Board is now elected by private agricultural and horticultural associations in annual conventions.

CHAIRMAN: Are they not appointed by the Governor, then?

MR. WILLIAM MILLER: They are not.

MR. SPENCER MILLER, JR.: My second question, Mr. Chairman—and I realize this is a pretty fundamental question—is as to whether or not it is going to be our intention to set up what we regard as a sound framework of constitutional government in the Administrative and Executive Section, and to provide that these departments or divisions should conform to that broad constitutional principle, or whether we are to adapt the Constitution to meet what are the exceptions to the general rule? I think it's pretty generally agreed that what you are dealing with in some of these agencies is, to put it mildly, a soviet form of government.

MR. WILLIAM MILLER: I should have said that the section I just read was changed somewhat in 1944; it doesn't change the principle of the section. That is, the certification is to the Governor, and then he has to make the appointment from those certified, with the advice and consent of the Senate. . . . I'll read it to you.

“The Secretary of Agriculture shall certify the names of those elected by the Convention, to the Governor, for appointment with the advice and consent of the Senate for the issuance of commissions for which each has been chosen.”

MR. WALTON: Mr. Miller, would you say that act you just read is constitutional under our present Constitution?

MR. WILLIAM MILLER: I would rather not answer that. I will say, however, that it's only fair to add that in 1944, when this language was under consideration as part of the 1944 revision, this act was passed by the same Legislature, and in passing the act the idea, I think, was to build a structure which would fit in with the requirements of the Constitution as recommended by the Legislature. That is how you get this rignarole of the convention certifying to the Governor the people he shall nominate, upon the advice and consent of the Senate. They thought at that time that that could be done, and perhaps it can.¹

¹ The material in italics which follows appeared in the record in summarized form.

MRS. BARUS: *Made the point that under the law the system is not truly representative, even of the farmers themselves.*

Motion carried.

MRS. BARUS: *Pointed out that Secretary Allen's letter to the Chairman expressing satisfaction with the Committee's action was written under a misapprehension, since he believed that the draft adopted would permit the present system to continue. The Chairman stated that he would reply to the Secretary and explain the situation to him.*

MR. YOUNG: *Moved to approve paragraph 4, giving the Governor power to request reports.*

Motion seconded.

There was discussion. Senator Farley made the point that the power to demand reports was inherent in the Executive and not needed in the Constitution.

CHAIRMAN: *What would happen if an official refused to make such a report?*

MR. WILLIAM MILLER: *It would be a breach of constitutional duty, and cause for removal.*

CHAIRMAN: *To whom would this clause apply?*

MR. WILLIAM MILLER: *To all officials.*

MRS. BARUS: *Moved to insert the words "in the Executive Branch."*

Motion seconded and carried.

*(The Committee adjourned upon motion to meet
Thursday, July 10, at 10 A. M.)*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Thursday, July 10, 1947

(Morning session)

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

PRESENT: Barus, Eggers, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne and Walton.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: The meeting is called to order.

MR. J. SPENCER SMITH: I move that the minutes be approved as submitted, Mr. Chairman.

MR. GEORGE H. WALTON: I second the motion.

CHAIRMAN: Any discussion?

(Silence)

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

The gentleman in charge of the transcriber has particularly requested that at least the gentlemen wear the receiver in their lapels. Having it in your hands and putting it down creates an extra noise, which disrupts the recording.

MR. WALTON: May I mention, sir, that the Judiciary Committee was told that the only Committee that properly handled these microphones was the Executive Committee.

(Laughter)

CHAIRMAN: I have gone over this with our technician, and I know that we have covered with the two drafts that you have in front of you, which were submitted to you, every point that was in the old Constitution. We were in the process of covering the yellow book,¹ and I would like to suggest that we go over this draft first, and then together go over the yellow book, the proposed revision of 1944. Then we will know we have left nothing out. Will you turn

¹The reference is to a comparison of the 1844 Constitution and the proposed Constitution of 1944, compiled by Charles deF. Besore and John B. McGeehan.

to the memorandum which the technician gave us on July 7, and turn to Public Officers and Employees, Section I. We had completed the first two pages.

MR. WALTON: I don't have that copy here, I am sure.

MR. LEWIS G. HANSEN: Have you got another one there?

CHAIRMAN: It's July 7. It starts off, "Executive, Section II. The Governor may grant pardons and reprieves . . ." That's where it starts.

MR. SMITH: Do you want to take up the green book?

MRS. JANE E. BARUS: No, this is the first draft.

CHAIRMAN: To make the comparison.

MR. WALTON: Mrs. Barus, I believe, has a matter she wishes to bring up, which she said we have not covered and which I think we might discuss at this time.

MRS. BARUS: You mean the Administrative Assistant?

MR. WALTON: No, the investigatory powers.

MRS. BARUS: I was looking through this and through the 1942 draft to see if we have covered every paragraph. In each of the 1942 and 1944 drafts there is a statement that, "The Governor may cause an investigation to be made of the conduct in office of any State officer except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting or a judicial officer." That is really confined to executive officers. "After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office. Upon application on behalf of the Governor or officer under investigation or subject to charges, a Justice of the Superior Court may issue subpoenas and, under penalty," and so on, "may compel the attendance of witnesses. . . ." Now, the 1942 draft said, "The Governor may upon complaint submitted to him by at least 20 reputable citizens cause an investigation to be made of the conduct in office of any State officer." It gives him the power of removal. It seems to me this is a matter which should be discussed thoroughly and considered. Maybe we will like neither of these, but obviously we feel that the Governor's power to make an investigation—

CHAIRMAN: We have it covered.

MRS. BARUS: Have we? Oh, I beg your pardon.

MR. WILLIAM MILLER: To the extent that paragraph 4 requires a written statement of information.

CHAIRMAN: I thought we had the power of removal by the Governor of any state officer.

MRS. BARUS: Only the department heads that he appoints, isn't that right?

MR. WILLIAM MILLER: And of those he does not appoint—

those that are appointed by boards or commissions—he may remove for cause.

MRS. BARUS: Through this same procedure that I just read?

MR. WILLIAM MILLER: No, there is no statutory procedure prescribed.

CHAIRMAN: It is not necessary. In other words, the way we have it written now he has a stronger power to remove those people whom he appoints than under either the old Constitution or the proposed 1944 revision.

MRS. BARUS: May I ask Mr. Miller, was it not proposed that he should be given the power to investigate the conduct in office of any official, except legislators and judges, in the government of the State or any of its political subdivisions?

MR. WILLIAM MILLER: There were two investigatory powers considered in 1944, one of which relates to the Governor's powers of investigation, and appears at the top of page 42, comparative arrangement. The other relates to the Legislature's power of investigation, and that appears at the top of page 66. The Governor's power of investigation in 1944 did not extend to a political subdivision. The Legislature's power of investigation, however, did extend to a political subdivision. The Legislature certainly should have the right to investigate any portion of the State Government—the county government, the municipal government or anything else.

MR. HANSEN: Do we have anything to do with that?

MR. WILLIAM MILLER: We have nothing to do with that, no.

MR. FRANK H. EGGERS: The Legislature already possesses that power under the law, to investigate any municipal, county or state official.

CHAIRMAN: The question is whether that should be in the Constitution.

MR. EGGERS: We are not concerned with that.

CHAIRMAN: It is a question whether that comes under the Legislative Section, or one of the things that—

MR. HANSEN: Let the Legislative Committee tackle that.

MRS. BARUS: The reason I raise the question is that it is one of those points, it seems to me, where you want to be sure that you are keeping the balance even. There has been a proposal, which I don't have before me, but I know it came from somewhere, that any branch—that is, the Chief Justice, or the Legislature, or the Governor—may investigate. I don't know whether they have considered that. I am sure the Committee on the Judiciary hasn't yet. It seems to me quite logical that the courts should do it, and I am sure the Legislature should.

MR. EGGERS: Do you think the Governor should?

MRS. BARUS: Yes, I do. I don't think that there shouldn't be protection for the person being investigated.

MR. SMITH: Theoretically that sounds very good, but we are continually questioning the high cost of government. If you are going to have an investigation it has to be heard, and that is going to cost a lot of money. Unless you are going to give the Governor a very large sum that he can draw on, you raise the question at once about the cost of investigation. There is always a group who think there is graft or something wrong with the government, or with the official in power.

It would seem to me that where there is real justification for investigation, we have in our general set-up today grand juries, the prosecutors and the inherent power that rests with the Legislature. A municipality is the instrumentality of the Legislature, and in connection with the power of the Legislature, it would seem to me that the Legislature could investigate to its heart's content, and after all it is the appropriating power.

I agree with Mrs. Barus that there must be a check on people, but there is that check today, it would seem to me, along lines that would be effective.

MRS. BARUS: I would like to answer that, Mr. Chairman. It certainly would cost money, but on the other hand, let us assume that there was malfeasance or mishandling in the matter of public funds. An investigation would cost a lot less than that. But on the other hand, I think that the very existence of this power would tend to be a check upon the mishandling of funds or malfeasance, or whatever is the correct term.

MR. WALTON: As far as that sort of thing is concerned in the municipalities, I don't think there is much danger in our present set-up in the State—there is the Division of Local Government, and so forth. I am sure we will run into a lot of trouble under any rule which would authorize the Governor to go into a municipality. On the other hand, I can see no objection to the Governor being given authority to investigate any State employee or official. I am inclined to think, in talking it over, that it is covered in the powers we have already given. Is that right, Bill (*addressing Mr. William Miller*)? Could the Governor investigate?

MR. WILLIAM MILLER: He could not investigate judicial powers. Well, that could be included. The way the power was limited was that any officer or employee in the Executive Branch could be investigated. You might extend that to the Judicial Branch. And, of course, you have the Legislature, if you want to. But that depends on what the Judiciary Committee recommends.

MR. WALTON: I understand the Committee on the Judiciary is planning to recommend a life tenure for judges.

MR. EGGERS: On the second appointment.

MR. WALTON: On the first appointment, I am told—as the federal judges are. I was told this morning that that was a very great likelihood. Under those circumstances, the only way they could be removed, I presume, would be by impeachment.

CHAIRMAN: In 1944, with life tenure there was also inserted a provision for removal of inferior court judges, other than by impeachment.

MR. WALTON: That's the handicap we have right now. The responsibility for impeachment now rests in a judicial system. It is better placed in the Chief Justice, so that the line of authority could run up and down in that way, and it may be the Governor would not be obliged to look into the judiciary at all.

MR. EGGERS: If we seek to extend the power of the Governor to other branches of the government, we destroy the very thing we are trying to create here, an adequate system of checks and balances. If the Governor can remove judicial officers by impeachment, which is the power of the Legislature, it would give the Governor authority over another branch of the government. It is perfectly right that we should give the Governor the right to remove all state officials whom he appoints—that is, the heads of departments or any other state officials—but if we are going to permit him to go in and remove judicial officers, he is infringing on another branch of the government. If we are going to permit him to go into the municipalities and counties and remove those officials, who are elected by the people, then he is infringing upon the right of the Legislature to go in and investigate. Nobody quarrels with the right of the Legislature to go in and investigate any municipality or official on proper resolution introduced, and so on.

MR. SMITH: On this paragraph we were discussing the other day, where he could investigate, it seems to me that from a practical angle that would give him everything he could possibly want in the way of investigation. These employees have to submit to him a written statement under oath, with such information as he may require relating to their conduct. He then can ask any and all sorts of questions that I don't think any investigation could show half as well.

CHAIRMAN: You are talking about Section IV?

MR. SMITH: Yes, Section IV, paragraph 4.

CHAIRMAN: I don't think that covers it. I think we should boil this thing down. I am just speaking my own opinion now, but I am going to request a motion on it. I am inclined to agree with Mayor Eggers in this respect; I don't think that the Governor should have the right to move in on municipal or county officers. The Legislature definitely should. I don't think that the Legislature or the Governor should have the right to move in on judiciary officers

unless the Judiciary Committee takes proper note of it and sets up the proper procedure whereby judges may be removed, and not make it too difficult. They really have to function properly.

That's my opinion, and if the majority of the Committee agrees with my thinking, I would like to entertain a motion that I, as Chairman, be instructed to tell the Legislative Committee Chairman that it is the consensus of this Committee that the Legislature definitely be granted full investigatory powers with respect to municipal and county officials, and that I also have the same power to request the Judiciary Committee to provide the proper method of removing judges.

MR. EGGERS: Could I speak on that a moment?

CHAIRMAN: Yes sir.

MR. EGGERS: It seems to me that if you give that opinion to the Chairman of the Judiciary Committee, that would indicate that this Committee believes there should be a clause in the Constitution giving the Legislature the right to go in and investigate. Such a clause is unnecessary. The Legislature already has the right. The municipalities and the counties are the creatures of the Legislature. The Legislature, therefore, has the right under the laws which are on the statute books today to go in, and we're merely saying to the Chairman of the Legislative Committee that we want incorporated into the Constitution something which is a matter for legislative enactment and is already on the statute books. You have a law—I think it was passed in 1945—on the statute books, which is the most stringent in the country on the investigation of municipalities . . .

CHAIRMAN: Excuse me, Mayor . . . Mrs. Barus.

MRS. BARUS: I just wanted to say that I have just had a call from Commissioner Miller and he is on his way and will be here very shortly. He had a conference with the Governor about something.

CHAIRMAN: Thank you. Mayor Eggers hasn't finished.

MR. EGGERS: I wanted to conclude that we have a law on the statute books today relating to the investigation of municipalities and counties, by the Legislature, which is the most stringent in the country. That law can't be changed unless the Legislature wants it changed. The mere addition of a clause in the Constitution would not strengthen it, nor would it add more power to the Legislature to repeal it or strengthen it.

MR. WALTON: Mr. Chairman, I'm inclined to agree with Mayor Eggers, both in his previous speech and the one he just made. The point that I want to see in here, however, is that the Governor, within the confines of his own Executive Department, may investigate not only the principal head of a department, but some subordinate member of the department. I think that is going to be neces-

sary with the various bureaus you are inevitably going to have under some of the departments. I think this can be done by adding the first sentence from 14 on page 42—

CHAIRMAN: Does that go back to the technician's draft?

MR. WALTON: Now, wait a minute. I want to add that sentence from the 1944 draft to paragraph 4 of the technician's draft.

CHAIRMAN: All right, but where is it?

MR. WALTON: On page 2 of the draft given us on July 8, I think there could be added as the first part of the fourth paragraph there, this sentence, which is from page 42 of the 1944 draft: "The Governor may cause an investigation to be made—

CHAIRMAN: What paragraph of page 42?

MR. WALTON: Paragraph 14, at the top of the page, first sentence: "The Governor may cause an investigation to be made of the conduct in office of any State officer except a member of the Legislature . . ." Just a minute; I don't want "any State officer," because I don't want a judicial officer. I beg your pardon. ". . . of any State officer except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting or a judicial officer." Then it could go on and say, "The Governor may, whenever in his opinion it would be in the public interest, require," and so forth.

CHAIRMAN: Insert those first two sentences.

MR. EGGERS: The first sentence.

CHAIRMAN: The second one, too.

MRS. BARUS: You need the whole thing, don't you, if you are going to have it? It all describes the procedure.

MR. EGGERS: From "The" down to "officer."

MR. SMITH: Well, Mr. Chairman, the rest of what you say is covered in another paragraph. I move that that be—

CHAIRMAN: Where is it in another paragraph?

MR. WALTON: The power of removal he is talking about.

CHAIRMAN: The power of removal is different; it's only in respect to the officers appointed by him—at the top.

MRS. BARUS: Wouldn't we have to put practically that whole paragraph in, in order to cover it, if it is going to be in at all. That's something to think about, isn't it?

MR. WILLIAM MILLER: Mr. Chairman, what is involved in the rest of the paragraph? It is a method of applying force. The Governor in his investigatory power may find a particular employee who says, "I won't supply the information," or "I forgot," and this is a procedure which will provide for contempt. That would mean that the employee would remain in jail, if the court so ordered, until he changes his mind about his duties—but that is sometimes dealt with by legislative power.

MR. WALTON: There again, Mr. Chairman, I think that when

you say how the subpoena shall issue and who shall issue it and all that, we are going into legislative matters. I would be inclined to take that first sentence and work it in with paragraph 4 somehow, and have that as No. 4, and I so move you.

MR. SMITH: I will second it.

CHAIRMAN: Any discussion on the motion? . . . Mrs. Barus.

MRS. BARUS: The second sentence—as far as what may happen after notice, service of changes and an opportunity to be heard, and the Governor may remove any such officer. Isn't that a logical part of it?

CHAIRMAN: I think that ought to be in there, too.

MR. WALTON: Mrs. Barus, we covered that in other places.

CHAIRMAN: Where?

MRS. BARUS: No, I think not, because the only thing we have dealt with so far on removal is the heads of the departments.

CHAIRMAN: That's right.

MRS. BARUS: And this, as you yourself said, should extend down into the subdivisions, this power of investigation, because there will be a great ramification of things that are already existing.

MR. SMITH: Mr. Chairman, may I say a word on that?

CHAIRMAN: Mr. Smith.

MR. SMITH: From a practical angle, if the Governor investigates any employee on down the line—I don't care who he is—the board that the employee works for, if it shows that he is incompetent or has violated the rules, can automatically discharge him. I don't think it's a question for the Governor. You are putting an awful lot on the Governor if you are going to go into the hundreds of employees in the State. He has to rely on the heads of the departments and the Civil Service.

MR. WALTON: I think that Commissioner Smith has a point there. I can see the Governor being concerned with removing heads of departments. On the other hand, I can see him being concerned about whether the head of the Bureau of Correction, or this one or that one, is doing a good job, and bringing out the facts about his conduct in office. But whether he should be charged with holding a trial on this subordinate officer or not, I have a very great question in my mind.

MRS. BARUS: I think what we forget is that we have left the whole matter of the internal structure of the departments to law, and as Mr. Miller pointed out when we were doing it, it would be impossible to write a law that gave the executive head practically no power at all. The man he puts at the head may really be only a nominal figure, and if the Governor can't go below that man, and if that man himself is forbidden by law to have any great control in

his own department, I don't think you will find a case of great laxity where any action will be taken.

CHAIRMAN: Mrs. Barus, I feel very strongly in favor of what you say. Let's accept essentially what you say. Let's visualize—suppose you have a Department of Institutions and Agencies, and a man has gotten in there as Commissioner who hasn't done a very good job and he has people all the way down the line that aren't very good. The Governor, under the provision we are talking about, has the power to remove that Commissioner. But suppose he's not getting along with the State Board of Control that was appointed. He can't particularly fire the Board, but the Board may refuse to fire the Keeper of the State Prison. It may refuse to fire lots of heads of departments that aren't doing very well. I certainly think the Governor should be given the power specifically in the Constitution to go in and bring up on charges anyone, anybody, who is functioning under the Executive Branch.

MR. EGGERS: You can amend and strengthen that in any way you want by just saying, "The Governor may cause an investigation to be made of the conduct in office of any state officer or employee, except a member of the Legislature or officer elected by the Senate and General Assembly in joint meeting or a judicial officer," and then continue on with paragraph 4, that "The Governor may also, whenever in his opinion any appointed state official or employee"—

CHAIRMAN: You give him the power, using that first sentence—that's what the motion is now.

MR. EGGERS: I am amending it to include "employee."

CHAIRMAN: So that he may investigate all employees. I would like to give him the power of removal.

MR. EGGERS: You are making this a part of paragraph 4 in Mr. Miller's draft. Making it part of 4, continue to say that the Governor may also, in pursuance of these powers, whenever in his opinion it would be in the public interest, require an appointed state official, officer or employee to submit to him a written statement or statements under oath of such information as he may require relating to the conduct of the respective officer or employee. Then you could use such written statements in connection with what constitutes cause for removal. And if he gives the statement, of course he is entitled to have the trial.

CHAIRMAN: It says "failure to furnish the statement." Suppose they furnish the statement?

MR. EGGERS: Well, that's part of the investigation. The statement may not be satisfactory.

CHAIRMAN: I think he should specifically have the power of removal, for cause.

MR. WILLIAM MILLER: There are statutes which provide

that the head of the department does not appoint his principal subordinates. They are appointed with the advice and consent of the Senate. So the head of the department might say, "I didn't appoint these officers; they aren't really responsible to me." We have provisions that subordinate officers have to have terms concurrent with the head of the department,—

MRS. BARUS: That's all to be fixed by law.

MR. WILLIAM MILLER:—with the result that unless you implement the investigatory powers with some power of taking action, you really haven't gone as far as I think the discussion here indicates you want to.

CHAIRMAN: Mr. Smith.

MR. SMITH: Mr. Chairman, I don't want to prolong the discussion, but I can tell you right now, when it comes to putting this in the way you have suggested, that if you open the door for these employees all along the line to take refuge behind this, they will say to their superior, "All right, if you don't like the way I'm doing, go to the Governor and let him investigate me." And you will have that all the way down the line, whereas, as it is today from a practical angle, these men do get out and are put out. It has been done time and time again, and I have had occasion to do it, and I know how it operates in the law as it is now.

If the Governor goes ahead and removes a man, then the next thing you know he goes into court for reinstatement, and then there's a trial, and the Governor may be summoned himself. He may have a hundred employees doing that same thing. It's a practical question. I think the motion that the Colonel made here, supplemented by Mayor Eggers, will cover your whole point.

CHAIRMAN: Yes, but let me talk right to your point. I see nothing in this language that I am suggesting—Mrs. Barus and I suggested—that would prevent you from functioning exactly the way you are now.

MR. SMITH: Except that it gives the employee the opportunity—

CHAIRMAN: I don't agree with you. I think it's just the reverse. I think it strengthens the department head. For instance, suppose an employee is trying to hide behind some series of subterfuges. It gives the head of the department, or the board, or the commission, the right to say to the employee, "Look here, we have tried to get you to play ball and you are making all sorts of excuses. Maybe you would rather have a gubernatorial investigation."

MR. EGGERS: Mr. Miller, the technician, understands what we are trying to get at. I suggest now that he be permitted to draw up a tentative draft embodying the thoughts of what we are trying to

cover here, and then let us discuss it so that we can see that he has it fully covered the way we want it.

MR. WALTON: For the sake of getting our records straight, I want to accept, first, Mayor Eggers' amendment to paragraph 4 here.

CHAIRMAN: To include the words "any state officer or employee."

MR. WALTON: Then, I'm willing, if it's your opinion, to accept this second sentence up here.¹

CHAIRMAN: I don't see how it can possibly do any harm. That's what I don't understand—

MR. EGGERS: That's all right.

MR. WALTON: Do you accept that (*addressing Mr. Smith*)?

MR. SMITH: Yes.

CHAIRMAN: We are trying to give the Governor the right to really be the Chief Executive. If we don't give him that second sentence, he isn't the Chief Executive.

MR. EGGERS: The only thing I object to in there is the issuance of subpoenas.

MR. WALTON: We are eliminating that.

CHAIRMAN: We are only using the second sentence, not the third.

MR. EGGERS: Down to "malfeasance in office."

MR. WALTON: That's right.

CHAIRMAN: Well, will you include the second sentence (*addressing Mr. Walton*)?

MR. WALTON: I included it in my original motion.

CHAIRMAN: Oh, excuse me. And Mr. Smith accepted that?

MR. SMITH: Sure.

CHAIRMAN: All right, then, I will repeat the motion. The motion is that there shall be included . . . Do you want to make that a separate section or do you want to include that in paragraph 4?

MR. WALTON: Include it in paragraph 4—4 and those two sentences altogether.

CHAIRMAN: As a separate paragraph in 4. It might be at least a separate sentence in 4.

MR. EGGERS: Mr. Miller will work it out.

CHAIRMAN: All right. The motion is that the first and second sentences under paragraph 14 on page 42 of the proposed 1944 revision, with the one change in the first sentence that after the words "any State officer" shall be included the words "or employee," shall be incorporated in our new proposed Section IV, paragraph 4, of our new draft. That's all clear, isn't it?

¹ The reference is to Art. IV, Sec. I, par. 14 of the proposed Constitution of 1944, appearing on page 42 of the comparison mentioned heretofore.

(Silence)

CHAIRMAN: Any further discussion on this?

(Silence)

MR. SMITH: Question!

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed, "No."

(Silence)

CHAIRMAN: So ordered.

MR. WALTON: When some historian of the future goes over our minutes he will say, "Well, how did this paragraph work out with what they said."

(Discussion off the record)

CHAIRMAN: I would like to entertain a motion, ladies and gentlemen, that as Chairman of the Executive Committee I be empowered to speak to the Chairman of the Judiciary Committee that we recommend they put in their section a method of impeachment of judges, because we feel that if they do not do so we should do so in our section. I will entertain such a motion.

MRS. BARUS: I so move.

MR. EGGERS: Second.

CHAIRMAN: Discussion?

(Silence)

MR. SMITH: Question!

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

MRS. BARUS: That's the provision for the Governor's power of investigation. Right?

CHAIRMAN: No, they put a provision in. For instance, in the old Constitution there was a provision, as I recall it, that the judiciary could be impeached by the Legislature the same way the Executive could.

MRS. BARUS: I thought, Mr. Chairman, that you wanted to make it easier to remove judges who might be ineffective in office—at least to investigate them.

CHAIRMAN: Yes, I did. That's right.

MRS. BARUS: Does that include the Chief Justice?

CHAIRMAN: I only feel that it's our duty to call their attention to the fact that there is a problem, and not tell them how to

work it out. That was the sense of the motion. I think that was your understanding, wasn't it?

MR. EGGERS: You wanted to call their attention to the fact that there is a problem which we haven't covered and which we feel should be covered, and it's their duty to cover it.

CHAIRMAN: That's right; but if they don't, then we must come back and cover it.

MRS. BARUS: The power to suggest to the Judiciary Committee?

CHAIRMAN: That's right. Now, I would like to come back again, as I started out, to the draft that was given us by our technician, dated July 8, and turn to the Public Officers and Employees Article. I will read each section and then review it. Section I, paragraph 1 (*reading*):

"Every appointive State officer shall, before entering upon the duties of his office, take and sign an oath of affirmation to support the Constitution of this State and of the United States and to perform the duties of his office faithfully, impartially and justly to the best of his ability."

Do I have a motion?

MR. SMITH: So move.

MR. EGGERS: Second.

CHAIRMAN: Discussion?

(*Silence*)

MR. SMITH: Question!

CHAIRMAN: All in favor say "Aye."

(*Chorus of "Ayes"*)

CHAIRMAN: Contrary, "No."

(*Silence*)

CHAIRMAN: So ordered.

MR. HANSEN: Is that "oath of affirmation" or "oath or affirmation."

MR. EGGERS: It should be "or."

MRS. BARUS: "Oath or affirmation"?

CHAIRMAN: "Or affirmation."

MR. WILLIAM MILLER: However, there is nothing in the Constitution that requires the Governor to take an oath. The Legislative Article contains a specific oath for the members of the Legislature. The old Constitution did not require the Governor to take an oath, if I remember correctly.

(*Discussion off the record*)

MR. EGGERS: I move Section I, paragraph 1, be amended to strike out the word "appointive."

MR. SMITH: Second the motion.

CHAIRMAN: Give the reason, please, Mayor.

MR. EGGERS: In order that every state officer, including elective and appointive, shall take an oath or affirmation.

MR. WILLIAM MILLER: That will include the Governor.

MR. EGGERS: That's right.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary-minded?

(Silence)

CHAIRMAN: So ordered.

Paragraph 2 (reading):

"Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, 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; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law."

MR. SMITH: Move it.

MR. EGGERS: Second it.

CHAIRMAN: I don't want to scratch at a silly thought, but I am just wondering whether it wouldn't be correct to include the idea of preference in appointments "by reason of active service in any branch of the military or naval forces of the United States *or the State of New Jersey* in time of war may be provided by law." . . . Colonel Walton.

MR. WALTON: If I could interject at this point—yesterday Judge Feller saw me, and he had with him several representatives from veterans' organizations who were of the opinion that this was not the proper place for that. They suggested that there should be only one clause in the entire Constitution on the general subject of veterans' preference, and that it was a matter for the joint chairmen to get together on. I'm looking for a note they gave me.

CHAIRMAN: I just want to ask a question, if I may. What is the reason behind that?

MR. WALTON: The reason was that veterans' preference is a subject that should be considered in its entirety, and they didn't want to see the Constitution cluttered up with a series of veterans' preferences, in the Executive Branch, in this branch, and in that branch.

CHAIRMAN: We aren't in the Executive Branch now. This is a section assigned to the Executive Committee, and it is quite different.

MR. EGGERS: Mr. Chairman, it would logically come under "Public Officers and Employees."

CHAIRMAN: I would certainly think so.

MR. SMITH: My interpretation of that clause is that it has nothing to do with the veterans at all, except that the Legislature can say that you may be given a leave of absence and not lose your office. You might be appointed to some office, and the Governor and Legislature can say that in time of war you will not lose your status. That's what I think.

MR. WALTON: I am not necessarily pushing this point. I was requested to bring it up. This is what they want in the Constitution (*reading*):

"Notwithstanding anything the Constitution contains, the Legislature shall have the power to grant preferences, privileges and exemptions to persons serving, or who shall have served, in the United States forces in time of war, and the dependents of such persons."

What the American Legion has requested is that we do not put it in here, but that we have a clause to that effect somewhere else in the Constitution.

MRS. BARUS: Did you listen to them yesterday?

MR. WALTON: Did I listen to them? No.

MR. EGGERS: I think they are asking that preference be extended to wives and children. I can see the justice of extending it to a widow of a man killed in action.

MRS. BARUS: I think she should have a pension, but there is no sense in saying that because a man happened to be killed in action his widow should get preference over a more capable citizen.

MR. EGGERS: We have the most magnanimous government in the world. We ship millions of tons of wheat abroad, and other food, but the widow of a poor veteran gets about \$50 a month.

MRS. BARUS: Well, I would be willing to concede that the widow of a veteran should perhaps have more money.

MR. EGGERS: She needs employment.

MRS. BARUS: But she doesn't need to find it at the expense of the merit system of the State.

MR. EGGERS: I am not going to argue the point of widows.

MRS. BARUS: To me their proposals, I feel, are perfectly unjustified. Let me say, as long as I'm saying this and I'm on the record, that I believe that we owe the veterans everything in the way of medical care, education, rehabilitation, and the opportunity to fit themselves back into civil life. I am not arguing against that at all. I am the mother of two veterans, and the sister of other veterans. I see their problems very keenly, and I see, too, that the real motive back of this whole pressure of yesterday is fear. They are awfully afraid that they are not going to be able to find a job. But the answer to that is, in my opinion, that we should make our economic system better so we can give these people jobs and remove that terrible dread of unemployment, which is really in back of what they are doing. Now understand, that is an entirely different

question from breaking down the principle of the merit system, in order to put in people who may not deserve it at all.

MR. EGGERS: What we are faced with is an accomplished fact.

MRS. BARUS: I realize that.

MR. EGGERS: The reason we had this motion the other day, Mrs. Barus, was to validate the laws already passed by the Legislature.

MRS. BARUS: I know that. I understand that. I know we've got to have the thing in. I would merely like to have it be as general and as little explicit as we must, so as not to mandate the Legislature to go still further. In my opinion, they have gone far enough.

MR. EGGERS: This is about as general as you can make it. It says, "... except that preference in appointment by reason of active service in any branch in the military or naval forces of the United States in time of war may be provided by law." It's already provided, now.

MRS. BARUS: I am opposed to it and I voted against it. I know it is going in, and I can see why. As I say, you are subject to pressures that I am not subject to. No veteran is going to come back at me, but I do think we should not make it explicit by mentioning widows and dependents—not anything more than what is the absolute minimum.

CHAIRMAN: Commissioner Smith.

MR. SMITH: This language, in my mind, plus what you suggested about the State of New Jersey, covers everything, and I don't see why we should entertain their suggestion at this particular time.

MRS. BARUS: I think another reason was that they also want a tax exemption clause in the Taxation Article.

MR. EGGERS: They didn't all ask for that, Mrs. Barus. Some veterans' organizations want incorporated in the Constitution one simple proposal, such as the American Legion has handed us. They want a simple proposal to the effect that it is a matter for the Legislature to decide.

MRS. BARUS: But I think this proposal springs from the fact that they wanted to cover tax exemption and civil service preference, which isn't up to the Legislature.

MR. EGGERS: They want to be covered by a \$500 tax exemption, which has already been granted to all veterans, from the War of 1812 on. And the civil service preferences—they are unconstitutional on the face of it. They want to validate those.

CHAIRMAN: Mr. Miller.

MR. WILLIAM MILLER: As to procedure, the plan is to circulate the draft all around the State. Even though the veterans' organizations may eventually find it possible to work this general clause into the Constitution somewhere else, maybe for the time being

this will prevent any misunderstanding as to how this Committee feels. It may be wise to leave something in here to indicate that the Committee approves. Then when the final draft is submitted, you take this out.

MR. WALTON: O. K. I think that's right.

MR. HANSEN: I move you, Mr. Chairman, that paragraph 2 be inserted—

MR. SMITH: With the suggestion that the Chairman made about the State of New Jersey?

MR. EGGERS: The Chairman made a suggestion that he would entertain a motion to amend it, which would include "active service in any branch of the military or naval forces of the United States or the State of New Jersey in time of war."

MR. SMITH: Second the motion.

CHAIRMAN: Discussion?

MRS. BARUS: On this matter, may I ask for a point of information. I don't object to this at all, but isn't it true that if the forces of the State ever go to war, they are all in the service of the United States? New Jersey can't send an army to war.

CHAIRMAN: I may not be in favor of it when I get done thinking about it.

MR. EGGERS: You see, the effect of it is going to be this: Your National Guard is inducted into the federal service in time of war, and you create a State Guard, which is entirely different. It is like a home defense force, and of course you are extending veterans' preference to them also.

CHAIRMAN: And they may only serve a few hours a day, or one day a week.

MR. HANSEN: I'd leave it the way it is.

CHAIRMAN: I think my idea was very bad. All right, question on the motion—

MR. HANSEN: I move that paragraph 2 be adopted as—

CHAIRMAN: You withdraw your original motion and move that paragraph 2 be adopted as written?

MR. HANSEN: That's right.

MRS. BARUS: Do you want that on the record—this suggestion that was just withdrawn—on my record?

CHAIRMAN: It's on the transcriber.

MRS. BARUS: All right, I'll put it in then.

CHAIRMAN: I don't think there is any harm in having it in—that we thought about it and rejected it. I made the suggestion, and I think it was a very bad suggestion.

MR. SMITH: Question on the motion.

MRS. BARUS: Before we vote, could I raise another question? It has nothing to do with veterans' preference at all, but as to para-

graph 2. I have seen a draft of the civil service clause which is recommended by the National Civil Service Association. They recommend leaving out one of these "as far as practicable," and that chimes in with my own thinking. The paragraph reads: ". . . 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 . . ." I quite agree with the second one, because as methods of procedures are developed and improved, you may have examinations into fitness which are not competitive examinations. But the first one, it seems to me, leaves a bad loophole—"so far as practicable, by examination." I would like to ask Mr. Miller what he thinks of that point.

MR. WILLIAM MILLER: I am familiar with the National Civil Service Association clause, and I don't feel very strongly about the first phrase. I think that it will still be, in practice, applied in the same way it is now, because an examination may be anything from one question to a very searching and very trying examination. So that while they, as a matter of form, may like to see the words out because they think they have a psychological connotation, I don't think there would be very much change in practice.

CHAIRMAN: I don't think it is a very important point because, on the other hand, if you leave out that "as far as practicable," you are going to have a lot of subterfuges anyway. One of them was a very obvious and a proper subterfuge. In time of war any number of departments were pleading to get men to come in. It would have been a farce to hold an examination. Anybody that could possibly come close to filling the job was taken on, and an examination would have been a farce.

MR. WILLIAM MILLER: I think that's a very good point, Mr. Chairman. In fact, no examinations were conducted. There was deliberate delay in order to give the veteran the opportunity to return to take the examination and qualify. The fact was, there was no point in giving an examination when you had more jobs than you had applicants.

CHAIRMAN: Right now in the Department of Institutions and Agencies, in certain of the institutions there are certain kinds of work that people in general don't like. It is always a farce to give examinations there, because it is a question of pleading to get people to take the job—they have so many vacancies.

MR. EGGERS: You can't get orderlies and ward maids.

CHAIRMAN: That's right. I just mention the fact that that phrase is not really a loophole; it's a very real thing, based on conditions that exist right now.

MR. WILLIAM MILLER: This language, as taken, is the first clause of the New York Constitution.

MRS. BARUS: Mr. Chairman, even in the case of an orderly—I see the point and it does make me feel somewhat different—but even in the case of an orderly, they have to find out whether he is healthy, whether he is diseased, or whether he is mentally competent, before they take them, or shouldn't they? At least they must find out if he's healthy?

MR. WILLIAM MILLER: It is not the practice in labor employment, for example, to give examinations. The recruitment is done as industry recruitment is done, I think. If any man seems on first appearance to be able to lift and has the required weight he isn't even tested.

MR. EGGERS: He is given a physical examination?

MR. WILLIAM MILLER: He may be given a physical examination, but it has nothing to do with his fitness for the job. It has to do with protecting the State from having a man die on the job.

MRS. BARUS: Well, that's what I mean, but at least there is an examination.

MR. WILLIAM MILLER: Not to determine merit or fitness for the appointment, though.

MR. SMITH: Question, Mr. Chairman.

CHAIRMAN: Any further discussion?

(Silence)

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed, "No."

(Silence)

CHAIRMAN: So ordered.

MR. WALTON: Mr. Chairman, I have an amendment that I want to put in before I forget it—back in the Article on the Governor. Do you want to go on, and bring that up later?

CHAIRMAN: You mean paragraph 1?

MR. WALTON: No, back in Section III, the second paragraph. I would like to move that after the word "general" there be added "and flag."

MR. SMITH: Where is this, Colonel?

MR. WALTON: Section III, the Militia, on the draft of July 8. The one we are working on.

MR. SMITH: The one we are working on, on the Militia?

MR. WALTON: First page, Section III, paragraph 2, after the word "general" I would like to add the words "and flag." It brings in what we left out by inadvertence.

MR. EGGERS: I will second it.

CHAIRMAN: The motion has been made and seconded.

MR. SMITH: Question!

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

Now back to the Public Officers and Employees Article, paragraph 3 *(reading)*:

"Any compensation for services or any fees received by any person by virtue of an appointive State office or position, in addition to the annual salary provided therefor, shall be forthwith paid by such person into the State Treasury, unless the compensation or fees be allowed and appropriated to him by law."

MR. SMITH: I move the paragraph.

MR. EGGERS: Second.

CHAIRMAN: Discussion?

(Silence)

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

Paragraph 4 *(reading)*:

"Any person before entering upon the duties of, or while holding, any public office, position, or employment in this State will be required to give bond, as may be provided by law."

MR. WALTON: I move its adoption.

MR. EGGERS: Second the motion.

CHAIRMAN: Discussion?

(Silence)

(Note is made of the appearance of Dr. Clothier at this time)

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

Paragraph 5 *(reading)*:

"The term of office of all officers elected or appointed pursuant to the provisions of this Constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office should bear a date prior to the expiration of the term of the incumbent of said office."

MR. SMITH: I move the adoption.

MR. EGGERS: Second.

CHAIRMAN: Discussion?

(Silence)

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

Section II, paragraph 1 (reading):

"County prosecutors shall be nominated and appointed by the Governor with the advice and consent of the Senate. Their term of office shall be five years, and they shall be removable in a manner to be provided by law."

MR. SMITH: I move the adoption.

MRS. BARUS: May I ask a question?

CHAIRMAN: Mrs. Barus.

MRS. BARUS: The term of office is five years, and that is going to overlap the Governor's term.

CHAIRMAN: That's correct. . . Colonel Walton.

MR. WALTON: That has been the intention, so that the Governor would not have to appoint 21 prosecutors the first week he went in office. It would tend to confuse the enforcement of the laws of this State if 21 prosecutors all had to be appointed the first week, when the Governor was influenced by the campaign that he had just been going through and when you would say he is likeliest to be weakest so far as political appointments are concerned, and has the greatest pull on him to appoint this person and that person. We thought that this would be much better.

MRS. BARUS: They, in a sense, are not really directly connected with the Governor, are they? Don't they honestly belong in the department of law enforcement? I think it was Governor Driscoll, himself, who made that suggestion.

MR. EGGERS: The Governor used that to illustrate his point on the 20 departments; that all law enforcement agencies could be consolidated in one department, say, the Department of Law. That would be the State Police, the Alcoholic Beverage Control Commission, possibly the county prosecutors, and so on.

CHAIRMAN: President Clothier.

MR. ROBERT C. CLOTHIER: I was just wondering what the term of office of the Governor is to be?

CHAIRMAN: Four years.

MR. CLOTHIER: Then every four or maybe five years, won't the incoming Governor and the incoming county prosecutors coincide?

CHAIRMAN: Yes, but it will be staggered.

MR. WILLIAM MILLER: May I say that because of the adoption of the prosecutor's office in different counties at different times, it staggers?

MR. EGGERS: It would remain exactly as it is now.

CHAIRMAN: I think there's a little different angle. I think we forget this—that whereas the county prosecutors are appointed by the Governor, their salaries are paid by the several counties. With the exception of being appointed by the Governor, in all of their functions and in everything they do they look primarily to the county, to the board of freeholders, so that the office isn't necessarily *per se* an arm of the State Government.

MR. CLOTHIER: But the Governor will have to appoint some of these men immediately on taking office, even with this proviso.

MR. WALTON: Not immediately; they generally expire in April.

CHAIRMAN: April is right.

MR. WALTON: So that he has a few months before he gets around to it. For example, the term of the Prosecutor of Camden County expires next April, and he would be appointed, reappointed we'll say, for five years. His term would then expire five years hence under the new Constitution.

MRS. BARUS: Mr. Chairman, what's the sense of having the Governor appoint the county officers?

CHAIRMAN: The prosecutor is the only one that he does appoint.

MR. WALTON: Mrs. Barus, the only other answer is to have your prosecutors elected, and it is very bad to have the enforcement of criminal law in the hands of a man who has to go through political campaigns. You get too much politics in the conduct of the prosecutor's office.

MRS. BARUS: Well, frankly, he has to call on somebody anyway, after all—either the county clerk or the Senator from that county.

MR. WALTON: It is hoped that this system would put the office on a little higher level than if the candidate would have to run for office every five years.

MR. WILLIAM MILLER: Isn't it true that, particularly in the prosecutor's case, while we call them county prosecutors they are essentially state officers enforcing state laws primarily? The state statutes are violated most often where county prosecutors are concerned, so that theirs is a dual capacity, in the local peace as well as state law enforcement, and they tie in with the Governor as the chief law enforcement officer.

MR. EGGERS: They are in the same capacity as the District Court judge, with their salaries paid by either the municipality or the county.

CHAIRMAN: Or a criminal court judge.

MR. SMITH: Question on the motion, Mr. Chairman.

CHAIRMAN: Any further discussion?

(Silence)

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

Section II, paragraph 2 (reading):

"County clerks, surrogates, sheriffs, and coroners shall be elected by the people of their respective counties at general election. The term of office of county clerks and surrogates shall be 5 years and of sheriffs and coroners shall be 3 years. Whenever a vacancy occurs in the office of county clerk, surrogate, sheriff or coroner of any county, it shall be filled in such manner as may be provided by law."

MR. HANSEN: Mr. Miller, what about registers of deeds?

MR. WILLIAM MILLER: They are now statutory positions, and those counties which have them, have them under the statutes.

MR. EGGERS: They were never under the Constitution.

MR. HANSEN: Mr. Chairman, what about a vacancy?

MR. WILLIAM MILLER: That is also provided for by statute.

CHAIRMAN: Mayor Eggers.

MR. EGGERS: On this paragraph, without any motion on it at the time being—it is not in agreement with my original motion on the sheriff, where I moved that the sheriff's and coroner's term shall be four years.

MRS. BARUS: I know that we did. We passed that.

CHAIRMAN: Oh, you did? I had forgotten that.

MR. WILLIAM MILLER: I'm sorry, I must have—

CHAIRMAN: Why do you want it four years, Frank?

MR. EGGERS: To coincide with the Governor's term.

CHAIRMAN: Well, we can take it up now, anyway.

MR. EGGERS: You are extending the Governor's term to four years, and the sheriff's term is as important in the county as the Governor is in the State. He is the chief peace officer, and three years is too short a time for it. I don't particularly care. If it remains the way it is, it's all right with me.

MR. WALTON: I think, Mr. Chairman, that Mayor Eggers has a point there. I can see why all the arguments that the Governor should serve for four years would apply on a smaller scale to the sheriff.

MR. WILLIAM MILLER: Another advantage is this: Eventually it may be possible to conduct general elections only every two years, if we didn't have to have any local officers elected in the odd years. This would make it impossible, because you would have to elect these people.

CHAIRMAN: It would still be impossible, because you are setting up county clerks and surrogates for every five years.

MR. WILLIAM MILLER: Yes, but they are appointed. You see, you don't have to hold an election.

MRS. BARUS: Oh, no, they're not, they're elected. I was about to ask that question.

MR. WILLIAM MILLER: I was thinking of the prosecutors when I said they were appointed. I meant that possibly the common term would fall on the right terms every 2 years.

MRS. BARUS: Since we are not going to have a general election every year, and I understand that they are going to recommend—

MR. EGGERS: Judge Hansen says he will not oppose a motion to make the Circuit Court judges' term ten years.

(Laughter)

CHAIRMAN: Present incumbents are always excepted, you know. It's a constitutional provision.

MR. HANSEN: As long as you don't reduce it.

MRS. BARUS: Why shouldn't they all be four years? Why isn't it logical for all of them to have four years, so at least they will come up at regular times for election.

MR. EGGERS: Make the sheriff five years, then, to agree with all of them.

MRS. BARUS: Well, how can you elect for five years, when you aren't going to have a general election every five years?

MR. WALTON: Six years is getting pretty long!

MRS. BARUS: It seems to me that if the Governor is going to have four years, it is quite logical, if you are going to have county clerks at all in the Constitution—I would say it is statutory and not in the Constitution. However, we have battled about that. There is no use going into that again. But since they are there, why isn't it consistent to have all of them four years?

CHAIRMAN: What's the matter with that?

MR. EGGERS: Then you are reducing terms. That would create a lot of confusion.

CHAIRMAN: Judge Hansen.

MR. HANSEN: What is this talk about not having general elections every year? Where does that come from?

MR. EGGERS: Well, we'll have to have them from what I hear from a Legislative Committee source. They are going to come out for a one-year term for Assemblymen.

CHAIRMAN: A one-year term for Assemblymen?

MRS. BARUS: That is the most glaring—

MR. EGGERS: If you do that you'll have an election every year, anyway.

MR. HANSEN: The reason for that is that the appropriations have to be made every year, from what I read in the papers.

CHAIRMAN: You mean a two-year term, but they will have

sessions every year—a two-year term for Assemblymen but sessions every year, instead of a biennial session. That's what they mean, I think.

MR. SMITH: Mr. Chairman, couldn't we get on with this and decide to have the sheriff either four years or five years?

CHAIRMAN: If you want to make a change without—

MR. EGGERS: I will do whatever the Committee wants to do.

CHAIRMAN: You can extend the existing—

MR. WILLIAM MILLER: If you want to do it without confusion, you could extend the existing incumbents' terms for a year, and from that point on have it every four years.

CHAIRMAN: You mean draw up a schedule?

MR. WILLIAM MILLER: Yes.

MR. SMITH: I was going to say, if we agreed that it is every four years for the sheriff, why don't we put it in, if it's a typographical error?

MR. WALTON: Would there be any objection to making it four and six years? I can see good reason why a good county clerk—in spite of the fact in our county I don't agree with our county clerk's political principles—if he is a good county clerk I can see good reason why he might stay in six years and do a good job.

MR. SMITH: You move it, and I'll second it.

MR. WALTON: No.

MRS. BARUS: It seems to be awfully illogical to me. Why should he have a longer term than the Governor, especially just now? I admit, I think it's silly. I can't see, as long as you are not preventing him from being reelected indefinitely, why the terms shouldn't just come out even and make the whole election system more logical.

MR. EGGERS: I am perfectly willing if you want to leave it the way it is.

CHAIRMAN: I like it the way it is, myself.

MRS. BARUS: What would you do about the five years?

CHAIRMAN: Leave it.

MRS. BARUS: That might mean that some years you will have to hold an election just to elect county clerks and surrogates.

MR. HANSEN: You have to have an election every year.

CHAIRMAN: You have to elect freeholders every year, at least one or two members of a municipality or local community. You have elections.

MRS. BARUS: Almost all municipal elections occur in the spring.

MR. EGGERS: That's in commission governments.

MR. WALTON: Most of the municipalities in the State don't have commission government.

MRS. BARUS: And they have elections in the fall?

CHAIRMAN: That's correct.

MR. EGGERS: I move, Mr. Chairman, that paragraph 2 be adopted as read.

MR. SMITH: Second the motion.

CHAIRMAN: Any discussion?

MRS. BARUS: I would just like to say that I am in favor of Mr. Miller's suggestion to add one year to suit the convenience of the present incumbent, and then you would probably have a regular, simple and easily understandable system. There is to me a great virtue in having the people who vote aroused pretty well. If you have this odd term coming in without even Assemblymen being elected, you are going to have even less interest and even a smaller vote and even less knowledge of why the people are elected and what for. I think it would be easy to elect very poor persons for term after term after term. If it were put as part of the general election plan it would be much more readily understood, and therefore produce a better election, in my opinion.

MR. SMITH: Mr. Chairman, you can always argue any way you want, but, Mrs. Barus, one of the reasons why there is discussion of having the Governor elected in an odd year from the President is in order to concentrate attention on the Governor. If you are going to put the county officers in the same bracket with the Governor, you will find that that will be paramount and the people will not make the choice they otherwise might make if you have it in an odd year, because the county clerk, or whatever the officer may be, has an opportunity to stand on his own merits and show what he has done or hasn't done. This other way, if you put it with the Governor, he'll be submerged and the Governor will carry the ticket one way or the other.

MRS. BARUS: Mr. Chairman, I see the force of that, and as far as I'm concerned the county clerks can be more or less of a fixture anyhow—they go on and on forever—but it seems to me there is a very real difference on the level of Governor and President. There is a matter of policy as between major parties. The county clerk is not supposed to be a figure of political policy; he is supposed to be an officer who carries out administrative jobs. I think it is highly different. I don't think the cases are the same. I believe that it should be brought into the regular system of four years. However, I won't say it again and waste your time; I'll just vote against it.

CHAIRMAN: Any further discussion?

(Silence)

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN. Contrary?

MRS. BARUS: No.

CHAIRMAN: Motion carried. So ordered.

Section III, paragraph 1 (*reading*):

"The Governor and all other administrative officers shall be liable to impeachment for misdemeanor committed during their continuance in office and for two years thereafter."

MR. SMITH: I move it.

CHAIRMAN: It has been moved, is it seconded?

MRS. BARUS: I will second it.

CHAIRMAN: Motion made and seconded . . . Mayor Eggers.

MR. EGGERS: On that paragraph, that's the same paragraph as in the original 1844 Constitution?

CHAIRMAN: No, it isn't.

MR. WILLIAM MILLER: For "misdemeanor *in office*" is in the proposed 1944 Constitution. One of the intentions of the Committee was to omit completely "for acts committed—"

CHAIRMAN: This wording exactly takes into consideration the point that you raised, regarding their continuance in office.

MRS. BARUS: Not to interrupt you—but to go back to the last one. When we decided that, was it as is, with the three and five years in it?

CHAIRMAN: Yes.

MRS. BARUS: No, four.

CHAIRMAN: No, not four.

MRS. BARUS: That's in contradiction to the motion we made before.

CHAIRMAN: It's correct the way it reads.

MRS. BARUS: All right. Now, coming back to this one. I think this whole question of impeachment is an awfully tough one. I'm sure after our first discussion I didn't understand it very well, and I've been talking it over with lawyers ever since. Is the meaning of this phrase that a man can be impeached for conduct while he is in office that has no connection whatever with the duties of his office?

MR. WILLIAM MILLER: That's correct.

MRS. BARUS: Well, now, is that right?

MR. WILLIAM MILLER: Not "conduct," you notice, it's "misdemeanor." It must be conduct amounting to criminal conduct. For example, if a man in office joins the "Black Shirts," or whatever you may call it, cases have held that that is not misdemeanor in office, even though many people think it's reprehensible and would like to get rid of him. He could not be impeached or removed for that kind of act. On the other hand, if you left out the words "for misdemeanor," the grounds of impeachment are pretty much left to the impeachment chief.

MRS. BARUS: What about a practical case? Let us take the case of Attorney-General Van Riper. Were those criminal acts?

MR. WILLIAM MILLER: The nature of the offense would be tried, for impeachment purposes, by the court for the trial of impeachments, which consists of the Senate. If they found him guilty, that wouldn't mean he was criminally guilty, but he was guilty in the sense that the Senate found him guilty of the acts committed, acts which would constitute misdemeanor.

MRS. BARUS: If a man—perhaps my husband, who is a lawyer—is impeached, he is still liable for criminal acts. Whether he is found guilty or not by the Senate, he is still open to trial under the law.

MR. WILLIAM MILLER: That is correct.

MRS. BARUS: But you couldn't impeach the man and then find him guilty after he had been tried?

MR. WILLIAM MILLER: I believe you could.

MRS. BARUS: That seems to me to be backward.

MR. WILLIAM MILLER: I have tried to consult all the authorities in preparation for this change, and all you can say is that the law of impeachment is a rather obscure one because of the relatively few cases.

MR. EGGERS: All it goes to is fitness and integrity to hold public office. You may do certain acts which are misdemeanors and for which you might be acquitted by a court, but nevertheless it certainly might reflect against your conduct in office and your right to hold office. You may be in an office in which the people have a right to believe in your integrity.

MRS. BARUS: Well, supposing a man was immoral—or let us say drinks heavily or gambles, but not really immoral—and is obviously a disliked character personally, but still is carrying on his office well or at least reasonably well, not doing anything really wrong or crooked in office. Can he be impeached for that—for his personal relations with women, let us say, or gambling habits?

MR. WILLIAM MILLER: Assuming none of those constitute a misdemeanor, he could not under this language.

MRS. BARUS: Well, then, what does constitute a misdemeanor? I know what the technical law says.

MR. WILLIAM MILLER: The various violations, crimes, that are set out in the statutes, and in some states, even though they are not set out in the statutes, if they were crimes at common law.

MR. EGGERS: Assuming he were immoral and the Senate could prove illicit relations with women, that constitutes a crime.

MRS. BARUS: It has absolutely nothing to do with how he conducts his office, does it?

MR. WILLIAM MILLER: That was the purpose of the motion, as I understand it.

MR. WALTON: Well, if a man robs a bank, that has nothing to do with—

MRS. BARUS: Robbing a bank is a crime.

MR. WALTON: Having immoral relations with women is a crime.

MRS. BARUS: Well, yes, but I think you have a great many able men, if we moralize, who are not above reproach. Frankly, I don't think it has anything to do with the question. It is his conduct in office. When Mayor Eggers proposed this change I agreed with it, but now I'm sort of bothered about it.

(Discussion off the record)

CHAIRMAN : Any further discussion?

MR. SMITH: I'll second the motion.

CHAIRMAN: All in favor of approving of paragraph 1 of Section III, as read, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

MRS. BARUS: Could I ask one more question? What I would like to say is, why two years thereafter? If you impeach a man and it is not a conviction, you can't put him in jail. Then what do you mean by impeachment, two years thereafter?

MR. WALTON: Well, I am elected Governor of the State; I do a reprehensible thing; they are about to impeach me, and I resign as Governor, and—

MRS. BARUS: But that wouldn't be during the—

MR. WALTON: It says continuance in office. If I resign I'm no longer in office.

MRS. BARUS: Yes, but what is the point of dragging a man up through this trial two years after?

MR. WILLIAM MILLER: He may be Governor.

MRS. BARUS: You aren't going to do any good.

MR. WILLIAM MILLER: Well, it will prevent him from holding public office.

MRS. BARUS: I see.

CHAIRMAN: Paragraph 2 *(reading)*:

"The General Assembly shall have the sole power of impeachment in such cases by a vote of the majority of all the members. All such impeachments shall be tried by the Senate, and members, when sitting for that purpose, shall be on oath or affirmation, 'truly and impartially to try and determine the charge in question according to evidence'; and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate."

MR. SMITH: I move the paragraph.

MR. HANSEN: Second the motion.

CHAIRMAN: Discussion?

(Silence)

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

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

MR. WALTON: Mr. Chairman, may I say one thing to Mrs. Barus before we leave this other section?

CHAIRMAN: Colonel Walton.

MR. WALTON: That is, the very sparing use of the right of impeachment in the past indicated that public bodies are not prone to rush in and punish people wrongly.

CHAIRMAN: Paragraph 3 *(reading)*:

"Judgment in cases of impeachment shall not extend further than to removal from office, and to disqualifications to hold and enjoy any public office of honor, profit or trust in this State; but the person convicted shall nevertheless be liable to indictment, trial and punishment according to law."

MR. HANSEN: I move its adoption.

MR. SMITH: Second the motion.

MR. WILLIAM MILLER: Strike out the "s" on the word "disqualifications."

CHAIRMAN: It has been moved and seconded. . . Discussion?

(Silence)

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

I think a good deal of this Schedule we'll have to hold over until we dovetail in with the other Committees, but there is one thing we should discuss and decide now—it comes under the Schedule, and we should be very specific. Governor Driscoll's term expires in January, 1950. Now, I call your attention to the fact that the presidential election would take place in 1948, and the gubernatorial election would take place in 1949. Is that clear? So, if we agreed the Governor shall serve for a four-year period, if we simply took the position that the next Governor shall be elected in an odd year as against the President of the United States and also as against the House of Representatives, Congressmen, there would be no question but what the Governor of the State would be the No. 1 interest.

MR. SMITH: Pardon me, but you elect your Representatives in 1950—Congress, not the Senate.

CHAIRMAN: You elect your Representatives every two years.

MR. SMITH: That would be '50.

CHAIRMAN: You elect them in '48 and you elect them again in '50.

MR. HANSEN: I was just going to ask Mr. Miller, through you, why the words '49 or '50 were inserted? What is the purpose of that?

MR. WILLIAM MILLER: I had no instructions as to what the Schedule should be. These are alternatives, which are common—

MR. HANSEN: How could it possibly be '50?

MR. WILLIAM MILLER: In the event the Committee wanted to recommend that the Governor be elected in the intermediate year between presidential elections, these alternatives are then available. The practice in about 30 states or so is to elect the Governor in an intermediate year—

MR. HANSEN: Well, the Congressmen are elected—

MR. WILLIAM MILLER: The Congressmen are elected, probably with the idea that you want some liaison between Congress and the Governor. While you don't want to have a sweep in a presidential election, you do want the people in Washington who speak for the State speaking the same language as the Governor, if possible.

MR. HANSEN: Yes, but they are already in the—

MR. WILLIAM MILLER: Yes, well, there's that argument. In other words, the alternative is—

MR. HANSEN: How could the election be held in 1950 this time?

MR. WILLIAM MILLER: Because, according to the Schedule, the present Governor's term would extend for one more year. If you did that you would have to provide—

MR. HANSEN: I see, in 1950 or '51.

MR. WILLIAM MILLER: Or the alternative. It didn't occur to me when I wrote this—you could provide that the new Governor shall be elected for a five-year term the first time, if you want to throw it over into the mid-point between presidential elections.

MR. HANSEN: I think that would be a better way of doing it than this way.

CHAIRMAN: Well, the first thing for the Committee to decide is in what year—never mind the number of the year—but in what type of election we want our Governor to be elected. We know we don't want it in a presidential year, presidential election, but do we want it in a complete off-year. Or do we want it to coincide with the election when we elect our Congressmen?

MR. HANSEN: A complete off-year, I would say.

MR. SMITH: I think, if it can be done, it should be done in a different year from the year they elect the Governor in New York or Pennsylvania.

MR. WALTON: I don't see that.

MR. SMITH: All right, but unfortunately in North Jersey, if a Governor is running in New York the same time as in New Jersey, the New York papers are read by our people and the gubernatorial election in New Jersey doesn't mean a thing.

CHAIRMAN : Well, it would be a different year from New York State anyway.

MR. WALTON: I think Pennsylvania is an even-numbered year also.

MR. EGGERS: Wouldn't 1949 be an odd year all around?

CHAIRMAN: It would be an odd year all around.

MR. HANSEN: And every fourth year thereafter would be an odd year, wouldn't it?

CHAIRMAN: Yes.

MRS. BARUS: Yes, of course it would be.

MR. SMITH: Do I understand you don't like this paragraph, Colonel Walton?

MR. WALTON: I didn't say that, Commissioner. I think it would have an unfavorable—

MR. SMITH: I can't see why.

MR. WALTON: The present Governor would have a lot of things leveled at him that would not be fair—that his reason for having this Constitutional Convention was to extend his term—

MR. SMITH: I mean on this '49.

MR. WALTON: Oh well, that's all right.

CHAIRMAN: Let's have a motion; we've discussed this.

MRS. BARUS: I move that this be approved, using '49 and striking out '50.

MR. WALTON: And striking out the second sentence.

MRS. BARUS: And striking out the second sentence.

MR. SMITH: Second the motion.

CHAIRMAN: Discussion?

MRS. BARUS: Wait a minute—just using the first sentence?

CHAIRMAN: The first sentence; that's all you need. Striking out the words "or '50."

MR. WILLIAM MILLER: You would only need the second one in the event you are going to put it in '49 and you wanted to elect the Governor for five years.

MRS. BARUS: Yes, I see.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

MRS. BARUS: Ought we to hear Mr. Miller's suggestions on this intermediate year?

MR. WILLIAM MILLER: I might say this: I put it in as a suggestion without knowing what the Committee wanted to do. There are only those two alternatives.

MR. HANSEN: Well, you are satisfied that this is judicious?

MR. WILLIAM MILLER: Yes. You will have to tie it in with the legislative elections, however.

MRS. BARUS: That's what I was wondering. I certainly think that it would be fine to have all these elected at one time.

MR. WILLIAM MILLER: If your Assemblymen have a two-year term, your present Assemblymen will be elected again this year, which is '47, and again in '49. If the Constitution happens to provide that those elected this year, at the same time the Constitution is going to come up, shall, if elected, serve for a two-year term, rather than under the old Constitution for a one-year term, that will bring them up in '49. And the Senators—we always have trouble working out that Schedule.

CHAIRMAN: Just read in the yellow book¹ in the Schedule about the Senators, and see how it works out.

MR. WILLIAM MILLER: The reason is that we don't want to cut down the terms of Senators, nor do you want to make any Senator search the law when the constituents begin to raise questions. You have three classes of Senators.

CHAIRMAN: Incidentally, you say we ought to have the gubernatorial election dovetail with the legislative election. Why?

MR. EGGERS: It's not necessary.

CHAIRMAN: What difference does it make? For instance, suppose you had it that the Assembly was elected in an off-year from the Governor?

MR. WALTON: Then, Mr. Chairman, you have the case of the Governor going in and you might have had a considerable change in sentiment during the course of the year, and you have the mixup that you had down in Congress, between Congress and the President.

CHAIRMAN: That's right. In other words, while we try to keep it away from national and Congressional elections, we ought to have it dovetail with our popular house, which is the Assembly.

MR. WALTON: That's right. The Governor goes in, and there might be a landslide, as there has been in the past.

MR. WILLIAM MILLER: There could be a change in the year, very easily.

CHAIRMAN: All right, I would like to entertain a motion that

¹ Comparison of the 1844 Constitution and 1944 proposed revised Constitution, prepared by Charles deF. Besore and John B. McGeehan.

I be instructed to consult with the Legislative Committee and point out this problem.

MR. EGGERS: I make such a motion.

MR. SMITH: Second the motion.

CHAIRMAN: All in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

(Silence)

CHAIRMAN: So ordered.

MR. WALTON: Mr. Chairman, may I make an inquiry about this second paragraph?

CHAIRMAN: Yes, Colonel Walton. Wait a minute; shall we read it first?

MR. WALTON: All right.

CHAIRMAN: Paragraph 2 *(reading)*:

"The adoption of this Constitution, or the taking effect of any provision thereof, shall not of itself affect the tenure, term or compensation of any persons holding any office or position in the executive branch of the State Government at the time of such adoption or taking effect, except as may be provided in this Constitution."

MR. WALTON: I would like to ask a very practical question. By that I do not mean to criticize the public official in question, because it's not that. I am asking on principle. The Adjutant-General and the Quartermaster-General now, under our present Constitution, claim that they have tenure for life, which in my opinion is a very foolish thing, if it is true. That's their claim. *(Addressing Mr. William Miller)*: Do I take it from this—they are not mentioned in the new Constitution—Bill, that this paragraph confirms their tenure in office?

MR. WILLIAM MILLER: It would then be necessary, by legislation which would reorganize the militia, to abolish the office.

CHAIRMAN: Wait a minute. May I point out this fact—that I don't know why it would be necessary to abolish the office by legislation, because paragraph 2 in Section III, under the Militia, says: "The Governor shall appoint all general and private officers of the militia, with the advice and consent of the Senate." So, they aren't even functioning. They don't even exist as officers until they are appointed by the Governor.

MR. WILLIAM MILLER: The difficulty is, as I understand the question, that he only appoints them when there are vacancies, and these men are assured there are no vacancies, because they have the offices and are there.

MRS. BARUS: But you can abolish the tenure by abolishing the office.

MR. WILLIAM MILLER: Well, my answer was that—

CHAIRMAN: But you haven't abolished the office.

MR. SMITH: Well, let's say you abolish the office of Adjutant-General.

MRS. BARUS: We haven't done it.

CHAIRMAN: As an office?

MR. WALTON: We have done it by inference. It was my intention to do it when that staff was set up. My thought was, as I think Governor Moore put it, that the Adjutant-General would serve as military secretary, as he should be under a proper military set-up. Under this paragraph, he could come in and say: "I'm not specifically mentioned in here, and under paragraph 2 of the Schedule my tenure is for life; therefore, I'm in and no Governor can do anything about it."

MR. SMITH: Let me ask this question. How can you abolish the office, Quartermaster-General or Adjutant-General, because, assuming that you do it temporarily, as you say, and then it goes to the staff, you still have a Quartermaster-General staff and you have an Adjutant? Then they would come into the court and the court would say: "Well, that's simply a subterfuge to abolish an office. You abolish it in name only, and then you can establish the same office again."

MR. WALTON: I hope you are right, but I want to be sure of it. That was the intention, but I want to be clear on that, because I don't want anybody, whether in the military or otherwise, to claim that they have tenure for life.

MR. SMITH: I think you should change this paragraph, then.

MR. WILLIAM MILLER: It would require legislation to cut down, because while you don't abolish the office, you could abolish the tenure. You could say that "the Quartermaster-General and Adjutant-General in office may remain in office and shall serve for a term of blank years."

CHAIRMAN: You could say, "subject to the pleasure of the Governor."

MR. WALTON: Well, the intention—the staff, as I conceive it and as I think it's conceived in modern military usage, should be the creation of the commander-in-chief of the office that has that staff, and that's what I intended to do by that wording, "by executive order."¹

MR. SMITH: Couldn't you accomplish your purpose by making an exception as to the military? You never should give tenure of office to military officers, by Constitution.

MR. EGGERS: Doesn't paragraph 3 cover? Could it be made "by executive order?"¹

MR. WALTON: Yes, but I'm afraid of that because it is not

¹ In Section III, paragraph 3 of the Tentative Draft prepared by the Committee.

specifically stated. I am worried about that claim that they have tenure for life.

MR. EGGERS: Could you change it there to "The Governor shall appoint all general and flag officers of the militia"?

MR. SMITH: The only way you can do it is to add a clause, "except the military branches of the government."

CHAIRMAN: I don't know why it isn't all right as it is.

MR. WALTON: Mr. Miller himself admits that there is a big question.

MR. WILLIAM MILLER: I think you need legislation.

MR. SMITH: Well, you won't get the Legislature to—

CHAIRMAN: Will the legislation transcend this?

MR. WILLIAM MILLER: What do you mean, you won't get legislation?

MR. SMITH: You try it and see. Mr. Chairman, I move the amendment to this motion.

MR. EGGERS: This says it "shall not of itself affect the tenure, term or compensation of any persons holding any office or position in the executive branch of the State Government."

MR. WILLIAM MILLER: To be perfectly clear on it, it probably would be desirable to take each of these offices which the Committee has recommended be known as constitutional officers, and dispose of them.

MRS. BARUS: By law?

MR. WILLIAM MILLER: No, by provision.

MR. EGGERS: Why can't you add a sentence to this: "The provisions of this paragraph shall not apply to the respective military positions"?

MR. SMITH: That's my suggestion. I move the paragraph with that amendment.

MR. EGGERS: Would that take care of it, Mr. Miller?

MR. WILLIAM MILLER: Well, it would and it wouldn't, in a sense, because then you still wouldn't know whether they are to remain in office for life or not. Elsewhere in the Constitution, I am sure, there will be a clause saying that all laws shall remain in full force and effect until altered or repealed, with the result that, their offices being set up by statute as well as Constitution, it would be confusing. . . . It should be clear-cut. In writing this—

MR. EGGERS: Can you do it? Can you make it clear?

MR. WILLIAM MILLER: I think so.

CHAIRMAN: Why wouldn't this cover it? Keep that exactly as it is and add the words, "or as may be provided by subsequent law"—". . . except as may be provided in this Constitution or as may be provided by subsequent law."

MR. WILLIAM MILLER: It could be like this: "... except as may be provided in this Constitution or, in the case of the militia, by executive order of the Governor." That would give him the constitutional power to set up his staff.

CHAIRMAN: O.K. Let's have this wording again.

MR. WILLIAM MILLER: "Except as may be provided in this Constitution or, in the case of the militia, by executive order of the Governor, exercising his powers pursuant to Article IV, Section III."

CHAIRMAN: I don't think you need that.

MR. WILLIAM MILLER: "... by executive order of the Governor."

CHAIRMAN: It's right in there; it says so. I don't know why you have to qualify it.

MR. SMITH: Mr. Chairman, the only question is this. There will be another provision in there that all existing laws are going to continue in effect. If that is so, and if these men claim they have tenure under the law now, then—

CHAIRMAN: But they haven't that tenure according to law. They have tenure according to the Constitution, which is being superseded by this.

MR. WALTON: It is just in the Constitution, the present Constitution, that they have tenure for life.

CHAIRMAN: But this Constitution supersedes that.

MR. WALTON: I hope so.

MR. HANSEN: Mr. Chairman, may I ask a question? What about these officers that we have taken out of the Constitution? What about their term of office? For instance, in the case of the Attorney-General, does this paragraph affect him any?

MR. WILLIAM MILLER: I don't believe it does—for this reason. In many cases where the Constitution sets up an office, it doesn't do more than that. Legislation has also been enacted, copying the language of the Constitution, and then going on to provide what the duties of the office shall be, term, compensation, and so on. All that legislation would still remain on the books, unless repealed.

MR. SPENCER MILLER, JR.: It should all be part of the reorganization process.

MR. EGGERS: It could be repealed.

MRS. BARUS: You wouldn't suddenly inject the Attorney-General or the Secretary of State's office—?

CHAIRMAN: No, certainly, you couldn't do that.

MR. WILLIAM MILLER: That was the reason for this next clause.¹ There would be a transition period at least, in which somebody has to function. Otherwise, you have chaos.

MR. HANSEN: That's what I meant to make sure about. We

¹ Schedule, paragraph 3, of the Tentative Draft prepared by the Committee.

don't want, just because we take certain offices out of the Constitution and he is not a constitutional officer any more—it isn't our purpose to terminate his office immediately, is it?

MRS. BARUS: No, and probably not the Secretary of State at all.

MR. WILLIAM MILLER: And that's the reason for this clause.

MR. HANSEN: This covers him, then, does it?

MR. WILLIAM MILLER: That's the way we intended it.

MR. HANSEN: The words, "except as may be provided in this Constitution"—those words couldn't be construed as meaning that the Attorney-General's office expires immediately?

MRS. BARUS: No. The same thing would hold good for your county clerks, if we took them out.

MR. HANSEN: Well, you haven't taken them out.

(Laughter)

MR. WILLIAM MILLER: You do affect his tenure, in the sense that he will no longer have constitutional tenure.

CHAIRMAN: There is another point. In the Legislative Article—in the Schedule of the Legislative Article—you will find also: "All laws in effect, which are not superseded by this Constitution, shall continue in effect."

MR. WALTON: Of course, the law in effect, as regards the Attorney-General, where it conflicts with this present Constitution, becomes unconstitutional.

CHAIRMAN: That's correct.

MRS. BARUS: It doesn't really conflict with it, does it?

MR. HANSEN: Well, it doesn't take the Attorney-General out, and it has, "The principal heads of departments shall be appointed by the Governor and serve at his pleasure."

MR. WILLIAM MILLER: That's covered in the next paragraph.

MR. SMITH: Move the question, Mr. Chairman.

CHAIRMAN: Before that, we have this question raised by Colonel Walton, so we need another motion adding that phrase, as proposed by the technician.

MR. HANSEN: I will make that motion.

MRS. BARUS: As a matter of fact, I don't think we have had a motion on that at all.

CHAIRMAN: On this?

COMMITTEE MEMBER: No.

CHAIRMAN: All right, will you revise your motion, please.

MR. HANSEN: Yes. I move it as amended.

MR. SMITH: Second.

CHAIRMAN: Discussion?

(Silence)

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

(Chorus of "Ayes")

CHAIRMAN: Contrary, no.

(Silence)

CHAIRMAN: So ordered.

CHAIRMAN: Paragraph 3 *(reading)*:

"On or before July first, one thousand nine hundred and forty-nine, legislation shall be enacted which shall complete the first allocation of executive and administrative offices, departments and instrumentalities of the State Government among and within such of the departments as provided by Article IV, Section IV of this Constitution."

I would like to take the liberty of speaking on that from two angles. No. 1, so far as I am concerned I would say that if that paragraph is complied with we would have a lot of deaths, heart failures, and people in the Executive and the Legislative Branches going into the nuthouse, because if the people adopt this Constitution on November 3, that is giving the Executive Branch seven months, a few months, in which to work up—

MR. WILLIAM MILLER: It would have two years.

MR. WALTON: That was the '44 draft.

CHAIRMAN: Well, '49—excuse me.

MR. HANSEN: That was the '44 draft had that error.

CHAIRMAN: O.K., I take it all back. I apologize, I was thinking of '48.

MR. SMITH: I move the adoption of this paragraph.

MR. HANSEN: This says "on or before."

CHAIRMAN: That means you've got two legislative sessions to do it. You ought to be able to do it in two legislative sessions, but one would be impossible.

MR. EGGERS: Second the motion.

CHAIRMAN: Discussion?

(Silence)

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, no.

(Silence)

CHAIRMAN: So ordered.

While we are on that subject, the second point I want to raise . . . I don't want to keep harping back, but yesterday I saw Senator Armstrong who—well, there aren't many people in the State who have studied the Executive Department more than he has. He feels that it is absolutely wrong to limit the number to 20. He thinks it ought to be 25. I am not trying to open the subject lightly. I only think it is wrong for us—it was wrong for me, rather—not to call

the attention of this Committee to the opinion of a man who has spent years in studying it and was right in the forefront of the last series of Executive Department reorganizations. I said, "Why do you pick out 25 as against 20?" "Well," he said, "by actual count, by actually going over our present system on a practical basis, 20 is definitely not enough. It doesn't allow any leeway." He was strongly in favor of 25; "Will you please tell your Committee?" So, I'm doing so.

Where the magic is of 20 as against 25 to accomplish our purpose, I don't know. Certainly our technician, Mr. Miller, went over the New York State Constitution. It seemed to me they had different divisions thrown into one department that had absolutely no connection with each other at all. The only reason that they were in that department was because the Constitution said it had to come under 19 heads. Now, if New York State has accomplished anything by throwing sand in with the ice cream, I don't see it. Just because you say that they must come within 19 departments and then throw all these miscellaneous, heterogeneous divisions under one head, I don't think it's particularly good government.

MR. SMITH: I will move you, Mr. Chairman, that we amend the provision and make it 25 departments.

CHAIRMAN: That's back in the other Section. I don't know where it is. Does anybody second that?

MR. EGGERS: I will second that.

CHAIRMAN: That was in the draft, under Executive, that was given to us on July 1, under paragraph 2.

MR. HANSEN: Mr. Chairman, I think we had a pretty full discussion on this matter, when more members were present than are present now. I don't think, after all that discussion, we should just change our mind right on the spur of the moment, especially in the absence of the other members of the Committee.

CHAIRMAN: I think that's a very good point, Judge Hansen. I'm only bringing it up as I promised I would. If you don't see fit to bring it up, I won't bring it up again.

MR. EGGERS: In view of that situation, I withdraw the second to the motion.

CHAIRMAN: Do you withdraw your motion, Mr. Smith?

MR. SMITH: Yes, sir.

MR. WALTON: How about instructing Mrs. Barus to bring up a general discussion on this some time in the future? Not necessarily holding up our rough draft, but bringing it up later.

MRS. BARUS: Could I talk about it in general? Do you think that the trouble in New York was that they had been foolish enough to name their departments—and that, in the Constitution, would be

a very stupid thing to do—or do you really think you can't do the best in the State in less than 20 departments?

MR. WILLIAM MILLER: I think essentially that was the difficulty. There is another thought to it. Before 1938 they had 18 departments, and they had about 12 years' experience, and they only found it necessary to add one, for a state twice as big as ours, with the result that—well, any number you use will not always prove to be satisfactory. If you seek a goal, you will always be able to reduce it to that number, I think. As you look over the reorganization of the various state governments of our country, which has been going on for the last 25 years, 20 is a high number. It depends on the concept of a department. I think that New York State probably has a different concept of a department, and possibly a better one in some respects, if you didn't have this desire to make it give lines of control to the Governor who wants to deal with the people. The Federal Government has, in many respects, less than 20.

MR. WALTON: Before we adjourn, Mr. Chairman, I have another question I would like to bring up, probably for Commissioner Miller's answer. We have in our State Government—I'm not talking about administrative boards—but we have in our State Government certain *quasi*-judicial bodies, such as the Board of Public Utility Commissioners, whose functions are of *quasi*-judicial nature.

First, I would like to know whether it's permissible for that sort of body to continue on such a judicial basis. Second—I am just questioning, and I certainly cannot be charged as being against extending the powers of the Governor—I want to be sure, though, that the Governor cannot willy-nilly yank out the Public Utility Commission because he doesn't have similar opinions on something that the Public Utility Commission should be able to decide without any pressure from the Executive Branch of the government, or the legislative bodies.

CHAIRMAN: Won't public opinion take care of that?

MR. WILLIAM MILLER: There's another answer, too—that Public Utilities is one example of the kind of agency with a board which overlaps the Governor's term. You notice in your draft, when you have a board at the head of the department, even if Public Utilities were to be the head, the board having overlapping terms would not be removable at the will of the Governor. I think in these regulatory agencies any number of possibilities are obvious. Probably, as they did in New York, a good many of them are put under what you call the Executive Department. Actually, that is a formal arrangement of the various regulatory agencies, and by virtue of their having boards which overlap the term of the Gover-

nor, it is only a matter of disposing of them, rather than the creation of lines of responsibility.

MR. WALTON: Thank you.

MR. EGGERS: I move, Mr. Chairman, that we adjourn for lunch.

CHAIRMAN: Don't you want to work until one?

MR. EGGERS: All right, but we're hungry.

CHAIRMAN: Well, you can't eat yet, until one o'clock. . . . Mrs. Barus.

MRS. BARUS: Am I now instructed to write into the minutes the question of changing the number of departments? I personally, from any of the arguments I've yet heard, am not convinced that it should be changed, but I have no wish—

CHAIRMAN: Of course, on the other hand, you could come back and say, why not limit it to five department, why not limit it to seven departments? Where is the magic in the word "twenty"? The only reason I bring it up is because I know just how much time this man has spent on it. It's a very considered opinion, and he knows more about it than anybody in this room. I know that.

MRS. BARUS: With due respect to his opinion, however, what he's trying to do, it would seem to me, is to make the beginning of the consolidation process a perfect jumble of agencies or departments or commissions. I can see that it wouldn't be impossible to do it very well immediately, and that's why it doesn't seem to me that it should be changed.

CHAIRMAN: Mr. Smith.

MR. SMITH: I think that 25 is a very good number, for this reason. Let's say that you eventually consolidate the departments into five, or three, or seven, or any number you want to. All you are doing by the constitutional amendment is suggesting that you put a ceiling on the number of departments. Then the Legislature or the Governor can reduce the number to any number they may desire. But, on the other hand, none of us can foresee the developments that may take place, and the need for things, and if you go to work and put a ceiling of 20, you prevent that; whereas, if you give 25—from what Senator Armstrong says, as you say, after a very careful study of the situation—it gives them leeway to do what in the future may be essential or necessary. By putting in 25 that doesn't mean you are going to have that many departments.

CHAIRMAN: Let's not discuss it any further. If Mrs. Barus doesn't want to bring it up, let's leave it on the basis—

MRS. BARUS: I want to be sure you want me to bring it up. I just wanted to get it in the minutes and understand that you want me to do it.

CHAIRMAN: All right. We can accomplish an awful lot of

mechanical work here, on things that are not argumentative, by just reading for the next 15 minutes the first draft that the technician submitted to us on July 1.

No. 1 (*reading*):

"The executive power shall be vested in the Governor."

Moved, seconded and carried.

MRS. BARUS: Some of these could be moved in a lump, couldn't they?

CHAIRMAN: All right. No. 2 (*reading*):

"The Governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State."

I will continue. Paragraph 3 (*reading*):

"No person holding any office or position, of profit, under the government of this State or of the United States, may qualify for the office of Governor. If a Governor or person administering the office of Governor shall accept any other office or position, of profit, under the government of this State or of the United States, his office of Governor shall thereby be vacated. No Governor shall be elected by the Legislature to any office under the government of this State or of the United States, during the term for which he shall have been elected Governor."

May I have a motion?

MR. SMITH: So move.

MRS. BARUS: I'll second it.

CHAIRMAN: Discussion? . . . Mrs. Barus.

MRS. BARUS: In the first line, what's the sense of a comma after position?

MR. WILLIAM MILLER: Because the word "profit" qualifies both.

MRS. BARUS: Now, in the last sentence, how can the Governor be elected by the Legislature to any office?

MR. WILLIAM MILLER: United States Senator.

MR. SMITH: That's a constitutional provision.

MRS. BARUS: All right.

MR. WILLIAM MILLER: It's one of those things you could leave out.

MR. SMITH: If the Legislature creates the office of Auditor, they might give the Auditor some \$50,000 a year, for argument's sake, and the Governor resigns and is elected Auditor.

MRS. BARUS: All right. Question!

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary, "No."

(Silence)

CHAIRMAN: So ordered.

MRS. BARUS: That covers paragraphs 1, 2 and 3.

CHAIRMAN: Right.

Paragraph 4 (*reading*):

"The Governor shall be elected by the legally qualified voters of this State. The person having the highest number of votes shall be the Governor; but if two or more shall be equal and highest in votes, one of them shall be elected Governor by the vote of a majority of the members of both houses in joint meeting at the regular legislative session next following the election for Governor by the people. Contested elections for the office of Governor shall be determined in such manner as may be provided by law."

MR. SMITH: Move it.

MR. EGGERS: Second it.

MR. WILLIAM MILLER: For your information, I know better than to use "highest number of votes." It should be "greatest."

CHAIRMAN: Any discussion?

MR. WILLIAM MILLER: Can you change it to "greatest," Mr. Chairman?

MR. SMITH: I'll move we change it to "greatest."

MR. SPENCER MILLER, JR.: I'll second that motion.

CHAIRMAN: All right, "highest" is changed to "greatest." All in favor say "Aye."

(*Chorus of "Ayes"*)

CHAIRMAN: Contrary, "No."

(*Silence*)

CHAIRMAN: So ordered.

MR. WILLIAM MILLER: Then in the next line, "equal and highest." You don't need "and highest." You don't need "highest" if they are equal.

CHAIRMAN: All in favor of removing the two words, "and highest," say "Aye."

(*Chorus of "Ayes"*)

CHAIRMAN: Contrary, "No."

(*Silence*)

CHAIRMAN: So ordered.

CHAIRMAN: All right. All in favor of this paragraph 4, as amended, say "Aye."

(*Chorus of "Ayes"*)

CHAIRMAN: Contrary minded?

(*Silence*)

CHAIRMAN: So ordered.

Paragraph 5 (*reading*):

"The term of office of the Governor shall be four years, beginning at noon of the third Tuesday of January, next following his election, and

ending at noon on the third Tuesday of January four years thereafter."

MR. SMITH: Move it.

CHAIRMAN: Second?

MRS. BARUS: I'll second it.

CHAIRMAN: Discussion? . . . Mayor Eggers.

MR. EGGERS: Mr. Chairman, what about the consecutive term of the Governor, the two 4-year terms?

CHAIRMAN: We are only talking about the term of office now.

MRS. BARUS: In the old Constitution it is indicated in the—

MR. WILLIAM MILLER: In the old Constitution the provision is indicated in the notes by the words following "no restriction."

MR. EGGERS: Well, there's no restriction—

MR. WALTON: As it stands now, there is no restriction.

MR. EGGERS: That's why I brought it up. There are some of the Committee who wanted two terms. I argued, of course, for indefinite terms, but if the majority of the Committee feel that they want two consecutive terms for Governor, it is all right by me.

CHAIRMAN: Well, Senator Barton told me quite definitely that he was in favor of limiting it to two terms. That gives us a majority of six to five.

MR. EGGERS: Well, I'm not going to have a six to five vote.

CHAIRMAN: How about you, Commissioner Smith?

MR. SMITH: I feel the same way. I'd like to see the Committee unanimous.

MR. EGGERS: I don't feel we should go out on the floor with a six to five vote. If the majority want two terms, it's all right with me.

MR. SMITH: The same with me.

MR. HANSEN: Same with me. I voted in opposition, but I withdraw that and go along with the majority of the Committee.

MR. EGGERS: If we go out on the floor with a six to five vote, we're likely to disrupt the whole Convention.

MRS. BARUS: While I think it would be foolish to go out on the floor with a six to five vote, I still think that there is no reason why the people in the minority on the Committee should not exercise their right to submit a minority report if they wish to. There is no particular authority that we have to agree with each other. I would still not wish to agree that I would not come out with a minority report on this, but I have not determined that I will. The one reason I still feel the proponents of it should consider that, is this: There is going to be quite a lot of pressure to have no succession whatever—from the floor, I mean. Obviously, somebody is going to speak for that point of view. It just seems to me possible that we might get the two as a compromise; whereas, if we put out for two

and there is a battle, we might lose it, and I would feel very strongly about that. To me it's one of the most important points in the Constitution. Therefore, I just can't give up on it, unless it was absolutely decided by the Convention.

MR. WALTON: Well, Mr. Chairman, in view of what Mayor Eggers says and, without trying to push in anything, suppose I make a motion that we limit the succession to two successive terms?

MR. EGGERS: Supposing we hold it until all members of the Committee are here?

MRS. BARUS: We have already taken a vote on that, if I'm not mistaken.

MR. WILLIAM MILLER: It was a tie vote.

MR. WALTON: I wouldn't be eligible to make that motion. It would have to be someone who voted to defeat it.

MR. SMITH: I would be willing to make that motion. May I ask you a question for the record, Mr. Chairman?

CHAIRMAN: Yes, sir.

MR. SMITH: I will make a statement and then ask you the question, for the record. There was a five to five vote in Senator Barton's absence.

CHAIRMAN: That's right.

MR. SMITH: And he told you that if those present are willing, he'll vote in favor of the two terms. Is that correct?

CHAIRMAN: That's correct.

MRS. BARUS: Two terms, but not succession?

CHAIRMAN: No, he's in favor of succession, but two terms—succession once.

MR. SMITH: In line with that, I move, Mr. Chairman, that you fix the phraseology—that it be added that there be two terms, limited to two terms, however they fix it. I move that motion.

MR. EGGERS: Two successive terms, you mean?

MRS. BARUS: Yes.

CHAIRMAN: Discussion? . . . Commissioner Miller.

MR. SPENCER MILLER, JR.: While I think there should be no very great difficulty in arriving at some agreement on that, would it not be well for us, in view of the fact that we are not all present this morning, to defer a final vote on that until we do have the Committee as a whole? I think this is a highly important question.

CHAIRMAN: Commissioner Miller, may I point out this to you: The only persons who are absent at the present time are the persons who signified they would vote in favor of this motion; and if this motion is carried by those present, we will be carrying the motion in line with the opinion of those who are absent.

MR. SMITH: Mr. Chairman, that is the only reason I made the

motion. Otherwise, I would agree with what you said, Commissioner Miller.

MR. EGGERS: All the persons are here who voted for indefinite succession.

CHAIRMAN: That's correct. The reason I am anxious to resolve it, frankly, is because I want to get this draft finished today and in the hands of the mimeograph man so that it can be disseminated to the public, and before we leave today I also want to set a date for a public hearing on this. As I see it, I would hate to have it go out without a decision on that point, so that the public can shoot at it.

MR. EGGERS: Are you satisfied Mr. Chairman, that our colleagues will find no fault with it?

CHAIRMAN: I am positive they won't, because—

MRS. BARUS: Yes, they did, they all voted for it.

CHAIRMAN: Let's see, the three that were here voted for two terms, with the ability to succeed himself once, and Senator Barton, who was not here, told me yesterday afternoon that he was in favor of that. So, that I know we are not doing anything that is against their wishes.

MR. EGGERS: I'm willing to take your word for it.

MR. SMITH: That's all right with me.

CHAIRMAN: Any further discussion on the matter?

MR. SPENCER MILLER, JR.: May I ask this one question? Are you now going to vote on the question of the right of the Governor to succeed himself, or are you voting on the whole Article 5?

MRS. BARUS: All of paragraph 5?

CHAIRMAN: All of paragraph 5.

MR. WALTON: As I understand it, paragraph 5 now allows unlimited succession. We are voting on a phrase to limit that to succession for one additional term. That's my understanding.

CHAIRMAN: That's correct.

MR. EGGERS: The Governor may be allowed to have two successive terms.

MR. HANSEN: Well, what about non-successive terms?

CHAIRMAN: We haven't come to that yet.

MR. SMITH: Now, I'm being technical. When you use the phraseology "two successive terms," is that understood to be one term and then another term?

CHAIRMAN: Yes. . . That's clear? There's no question about that?

MR. SMITH: All right; I was just asking the question.

MR. EGGERS: Then four years can elapse and he can run again.

MR. SMITH: Question on the motion, Mr. Chairman.

CHAIRMAN: All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary?

MRS. BARUS: No. . . I'm voting "no" because I would like to consider this.

MR. SMITH: May I ask a question?

CHAIRMAN: Wait a minute. Let me finish the vote first. All in favor, raise their hands.

MR. SMITH: Before you take that, can I still ask a question?

CHAIRMAN: Yes, Commissioner.

MR. SMITH: This is for Mrs. Barus, and from my own point of view. Even if Mrs. Barus was to vote "Aye" now, that doesn't preclude her on the Convention floor, if she feels so minded, from entering into the debate upon the succession question.

CHAIRMAN: That isn't my understanding.

MRS. BARUS: Isn't it?

CHAIRMAN: No.

MRS. BARUS: I thought I ought to get myself on record in case I wanted to say in a minority report that—

CHAIRMAN: Let's finish the vote. All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Contrary? You said "No," Mrs. Barus.

MRS. BARUS: Well, I did say "No" but—

CHAIRMAN: Well, keep on saying "No." . . . All right. All in favor raise your hand.

(A count of raised hands was made by the Chairman)

CHAIRMAN: Five out of six, six to one, the motion is carried.

I would just like to say a word, so that as far as I personally am concerned you will all understand how I feel about myself and how I feel about each one of you persons. First, I am Chairman of this Executive Committee, and I happen to be of the philosophy that believes that it is vitally important that we pass a Constitution. I am convinced that these 81 delegates out here are of such character that they will come out with a Constitution which is vastly better than the one we have now, no matter whether there might be one or two points I dislike intensely about what they will finally end up with. And I further am one to feel that if we can come out with an absolutely unanimous report, even though there are a number of things here that I don't like that we have already passed, that we will have much more chance of putting the thing through the Convention, and the Convention in turn can go to the people and accomplish what they want. Now, that's just my opinion. I further, on the other hand, am of the opinion that if nobody else in the

Committee agrees with my point of view, I have no feeling whatsoever, as Chairman of the Committee, about their taking an entirely different point of view in any way, either at this Committee or on the floor of the Convention. I can't express myself more frankly than that.

MRS. BARUS: Mr. Chairman, since I seem to be the dissenting vote, I would like to say that I appreciate your point of view very much, and I am sure it could be said there are a good many things that have been brought up here that I'm not at all in favor of. I certainly have no thought of bucking the will of the Committee or being a black sheep or a lone wolf on the floor of the Convention. I do want to say, however, frankly, that I still think a minority report would be a legitimate thing, even perhaps a healthy thing, if not abused. And I just wanted to tell you that I still haven't completely made up my mind about this point, because it is to me a very important point. Do I make myself clear?

CHAIRMAN: Yes, indeed.

MR. SMITH: May I ask a question on procedure? Suppose, in this Committee, we vote unanimously for a measure and it goes out on the floor. Then, for one reason or another, as the debate proceeds on the floor something is done that would cause us to modify our opinion. Is there anything wrong morally, any commitment, for us not to express ourselves?

CHAIRMAN: No.

MR. SMITH: Well, what I'm getting at is that if Mrs. Barus would change her vote now so that we make a unanimous report, there is nothing to prevent her in the debate on this question from expressing her opinion as she wishes, without in any way embarrassing us as a Committee.

CHAIRMAN: No. That's right. Let me just go further to tell you how I visualize the procedure. This is very important. As I understand the procedure that probably will be followed, when we meet as a Committee of the Whole, which I hope will certainly begin the first week in August, to take up the various reports of the Committees, Dr. Clothier will appoint somebody as Chairman of the Committee of the Whole to preside. At first the thinking was that the Chairman of the Committee of the Whole would be the Chairman of the Committee whose report was being considered at that time. Several persons, and I myself, went to Dr. Clothier and suggested that that was a stupid procedure, because if there ever was a time when the Chairman of a Committee is needed, it's on the floor of the Convention. Instead of being the whip, so to speak, in presenting his report, he's stuck up there as Chairman, not being able to speak. So the procedure will be that whoever else might be Chair-

man of the Committee of the Whole, it will not be the Chairman of the Committee whose report is being presented.

I also visualize my duty as Chairman of this Committee, when our report is being considered, is that I will sort of be the floor manager. Before that we will meet here and we will take up the various controversial points. When the report is presented and there are points which are to be defended, I myself will defend only a very few of them. We will decide among ourselves the members of this Committee who feel particularly strongly about the particular thing that has been adopted here. We will in succession take turns, and we will be assigned a number, and I will call upon different ones of you. It will all be written out. I won't have to call on you, but you will all have your assignments. You will speak and defend this position and that position, and so forth. We will have it organized.

Now, that's the way I visualize it. You don't have to reply to it right now, but think it over, and you might have ten other ideas that are much better.

MR. SPENCER MILLER, JR.: Mr. Chairman.

CHAIRMAN: Mr. Miller.

MR. SPENCER MILLER, JR.: To go back to your previous question—we referred to you and asked you as Chairman to inquire from the Committee on Submission and Address to the People about this public question. I have to apologize for being late, but I assume you know I had to be in Trenton with the Governor this morning. Have you had an opportunity yet to take that question up with the Committee?

CHAIRMAN: With whom?

MR. SPENCER MILLER, JR.: The Committee on Submission and Address to the People—this matter of a public question as to whether or not we should have limited or unlimited succession. You were going to do that.

CHAIRMAN: Yes, that was to be taken up by me with all the Chairmen, the group of chairmen, and the group of chairmen hasn't met and won't meet until next Tuesday. On the other hand this motion, to a certain extent, precludes, I would think, my discussion with them, although I will bring it up. My feeling about the way we ought to proceed from here—and I'm quite sure that we can conclude this whole business this afternoon—is that the next move will be that the technician have this thing mimeographed. We will have the staff here, or the Committee on Submission and Address to the People, broadcast this to all the newspapers and all the organizations and so forth. And before we leave we will fix a day for a public hearing on what we have set out. After that public hearing—and at the public hearing every member of the Committee must be present—with the information we get, we will then meet as a Committee

again and see whether or not, in view of the public opinion that may be expressed, anyone of us wants to change his mind, or as a Committee we want to change our minds.

MR. SPENCER MILLER, JR.: May I say I appreciate the question in Mrs. Barus' mind as regards the position she now takes with reference to any subsequent position she might take. I think it ought to be made very clear in the vote which we have recently taken, that it is taken without prejudice as regards what we may do when we see the final draft that comes from the technician. There may be ideas in that draft which may make it necessary for us to say that we shall have to exercise our right and conscience to disagree, or that we may find it necessary, when this matter comes up on the floor of the Convention, also to express our dissent. We are a Committee of the Whole acting in its several parts at the present time.

CHAIRMAN: That's correct.

MR. SPENCER MILLER, JR.: And in that role of acting in its several parts we cannot, as I see it, make any final or irrevocable determination until we see the whole and not the several parts. It is for that reason that I am a little hesitant about the suggestion that it be said that this whole thing be adopted unanimously. That it was adopted by the Committee removes, perhaps, even the slightest suggestion of onus upon any person who felt obligated as the result of a further study of the thing to find herself or himself in disagreement.

I would find myself able to live under a Constitution in this State which makes it possible for the Chief Executive to have two successive terms. I think there is equal validity in both constitutional law and practice to have no limit to succession. I would have to say that, if we are now asking for a draft to be submitted to the people for their consideration, and if the considered judgment of the people was that they prefer unlimited succession or limited succession, I would then feel not the slightest compunction in saying that I would support the proposal for unlimited succession, as I do in principle. Therefore, I think that we ought to underscore the importance of the fact that no action or any vote that we took today with reference to this thing is going to prejudice our final decision, either when we see the thing as a complete document, or upon the floor of the Convention.

I make this somewhat lengthy statement because I think it is important to make sure we are clear, that these votes are in no sense taken with prejudice, but as indications of our present mind in this matter.

CHAIRMAN: That's exactly the way I feel.

MR. EGGERS: I'm glad Commissioner Miller made that statement. I yielded on this point because I wanted to see some kind of

a draft go out before the public, and not hold up the work of the Committee or let it go out that the Committee was split on the thing. Whatever the public decides at the public hearing, which we all will attend, may change all our minds.

CHAIRMAN: I feel exactly the same way. I think what might be said at the public hearing, on what we might call our tentative final job, is very important. A motion to adjourn is in order.

MRS. BARUS: Well, Mr. Chairman, it doesn't make me feel terrible to be voted down. If you feel it has any value, I will change my vote with the understanding that I can reconsider—if you think an unanimous vote makes any difference. We are not going to indicate that we did or did not vote unanimously on anything, are we?

CHAIRMAN: Look, let it go. You can change your mind.

Motion to adjourn is in order.

MR. SMITH: I move we recess.

CHAIRMAN: A recess. We will meet back here at quarter after two, and we are going to work until we finish.

(Recess was taken at 1:00 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Thursday, July 10, 1947

(Afternoon session)

(The session began at 2:15 P.M.)

PRESENT: Barus, Eggers, Hansen, Miller, S., Jr., Smith, J. S.,
Van Alstyne and Walton.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: I want to start off
the afternoon session by reading a letter I just received from
Governor Driscoll on the subject of succession which I think should
be part of the record and which you should hear. *(Reading):*

"STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT"

July 7, 1947

Honorable David Van Alstyne
Chairman, Committee on Executive, Militia and Civil Officers
Constitution Convention
New Brunswick, New Jersey

My dear Senator Van Alstyne:

I am pleased that our mutual friend, Walter E. Edge, has presented to
the Committee on Executive, Militia and Civil Officers of the Constitu-
tional Convention, his views on the right of our citizens to reelect future
governors to succeed themselves. I know of no one better qualified by
broad experience than Walter Edge to express an important opinion on
this subject. I am confident that his opinion will receive the careful con-
sideration of the delegates.

The delegates to the Constitutional Convention, in the framing of a
new Constitution, are exercising, within the limits of the enabling legisla-
tion, the sovereignty of all of our citizens. I have complete confidence in
the statesmanship, integrity and patriotism of the men and women now
assembled in New Brunswick. I am confident that the decisions that they
make will constitute the expression of pure motives and will be in the
public interest. I am sure we will all agree with Lord Bryce in his famous
study of our government when he stated that the proceedings of a consti-
tutional convention 'excites more interest; its debates are more construc-
tive; its conclusions are more carefully weighed,' because they involve the
basic framework of our government.

Accordingly, I have considered it the privilege and the duty of the Chief
Executive of your State to encourage the work of the Convention, includ-
ing the presentation of varying opinions on important subjects, even
though those opinions may be different in some respects from those held
by myself. As old friends, I am sure that Walter Edge and I are in agree-
ment that every difference of opinion is not a difference of principle. As
Thomas Jefferson stated in his first inaugural address, 'Error of opinion
may be tolerated where reason is left free to combat it.'

Our delegates have, of course, more weighty problems that must be

decided than that of gubernatorial succession. These include the drafting of an article providing for a modern, independent judicial system, a sound base for an equitable tax system, and other issues that I might mention. I hope that my predecessor will have an opportunity to express himself on these and other important subjects with the same care that he has devoted to the point under discussion.

The subject of executive succession was debated at length in 1787 and 1788 and the arguments presented today against executive succession are largely the echo of those considered and disposed of by the framers of our Federal Constitution. For example, Alexander Hamilton, in his *Federalist* papers, stated: 'Nothing appears more plausible at first sight, nor more ill-founded upon close inspection, than a scheme which in relation to the present point has had some respectable advocates.—I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or forever after. This exclusion, whether temporary or perpetual, would have nearly the same effects, and these effects would be for the most part rather pernicious than salutary.' Hamilton then proceeds to cite five reasons why, in his judgment, executive succession should be permitted. These reasons are as valid today as they were when first presented.

Perhaps the best answer to the present debate is to be found in the record of today. In thirty states, the people are permitted to reelect a good governor to succeed himself. In five additional states limited succession is permitted. In a great majority of these states this system appears to have worked well, and to have been in the public interest. In our State, Governors Edison, Hoffman, Larson and Moore have considered the subject and now advocate the privilege of reelection. In addition, as you know, Governor Woodrow Wilson and many others, after reviewing the Jersey scene and the attendant evils of the present system, advocated a change.

Accordingly, the weight of authority as well as of experience would appear to support the right of the people to reelect a Governor if they so desire. Speaking of experience, our present system leaves much to be desired. There is no particular virtue in permitting a Governor to be re-elected every other term. It has been argued that if a Governor is permitted immediate succession he would devote his time to preparation for the next gubernatorial election. Hamilton argued that this was not undesirable as it would induce the Chief Executive to put forward his best efforts in the 'hope of obtaining, by meriting,' retention. On the other hand, in the past, New Jersey Governors, looking forward to reelection, have not hesitated to devote a considerable amount of their time and energy to the preparation for a return to office three years hence.

I have no desire to belabor the issue nor repeat the statement that I made before your Committee some time ago. It seems to me, however, that my friend and predecessor has considered a proposed Executive Article without giving due consideration to all the other proposals that have been made, particularly for the strengthening of the Judicial and Executive Branches of our government. Our purpose is a complete, integrated document maintaining basic balance between the Legislative, Judicial and Executive Branches of our government. To the extent that we strengthen the Legislative and Judicial Branches, we will protect ourselves against the dangers that my predecessor fears and the framers of the Federal Constitution considered and discarded. With an independent judiciary; executive appointments requiring confirmation by the Senate; and the Legislature maintaining the power to appropriate funds, the operation of government will be afforded complete protection against despotism in this State.

With respect to the power of appointment, the importance of senatorial confirmation and the proposed limitation on *ad interim* appointments should not be overlooked. Nor should we overlook the fact that all previous revision proposals, including that supported by my predecessor, advocated longer terms for our judiciary, thus materially limiting the number of judicial appointments that may be made by a Governor irrespective of

whether he holds office for four or eight years. It is likewise my hope that we will continue to develop the Civil Service principle and that a multitude of minor appointments that are now required to be made by the Governor will either be placed in the classified service or be given the status of permanent under-secretaries. In practically all of the states mentioned by the former Governor, the chief executive has power far beyond that vested in the Governor of our State. In New York State, for example, the governor may name counsel or attorneys to aid in carrying out the functions of the department of law; designate the presiding justices and all of the associate justices of the four Appellate Divisions of the New York Supreme Court; appoint the heads of all but three State departments and remove the same in the manner prescribed by law. In addition, the New York governor may, pursuant to authority vested in him, remove, in all counties except those in the City of New York, sheriffs, county clerks, district attorneys and registers.

May I point out that in Louisiana, at a time when the governor was prohibited from succeeding himself, a tyrant was enabled to seize and hold the reins of government either directly or by remote control? In fact, there is more danger to be found in the remote control of government and a boss behind the scenes than in the continuation of a man in office who, after all, is periodically personally accountable to the people.

Very truly yours,

s/ ALFRED E. DRISCOLL
Governor."

MR. SPENCER MILLER, JR.: I move that the letter be acknowledged as received and made a part of the record of this Committee, and I think we might appropriately authorize you, sir, as the Chairman, to release this letter to the press at your usual press hour this afternoon. I would say that this document, while addressed to us, would have not only very wide, not only public interest, but public reading. In view of the fact that other papers which have been issued by former Governors in connection with this matter have received wide public reading, I would like to include in my motion that not only this document be made a part of the record of our Committee but that you be authorized to see that it is released for the press.

MR. FRANK H. EGGERS: Second the motion.

CHAIRMAN: The motion has been seconded. Everybody in favor say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed?

(Silence)

CHAIRMAN: So ordered.

I have also received a letter from Dean Martin of the College of Agriculture of Rutgers University in which he indicates he is very anxious to know what is going to happen to the Soil Conservation Committee of which he is chairman. If you are in accord I will write to him that that is a matter which will be handled by the Legislature and has no place in this Constitution.

I have also received a letter from the City Clerk of Elizabeth in which he encloses copy of a resolution adopted by the City Council

which concerns taxation. I will inform him that I have referred it to the Committee on Taxation. I don't know why it was sent to me. It has absolutely nothing to do with anything except taxation.

MR. EGGERS: I would like to ask if there is any disposition on the part of the Committee to give consideration to the election of a Governor in a year other than a Presidential year.

CHAIRMAN: That brings up a point. I would like to report that I have already consulted with the Chairman of the Legislative Committee. He, as an individual, is in complete agreement with all the points that we raised and that we suggested should be taken up and passed on by the Legislative Committee. He thought that the Governor should be elected in the odd years and that there should be a restriction that the Assemblymen who are elected in 1948, even after the adoption of this Constitution, should only serve for one year, and that it is only beginning with the Assemblymen elected in 1949 that they will serve for two years. So that would mean your Assemblymen and your Governor would be elected in the same year.

We will now go on to consider paragraph 6 (*reading*):

"In the event of a vacancy in the office of Governor . . ."

MR. EGGERS: I think the Governor meant—oh, that's right; an Assemblyman elected in 1948 would serve for one year only.

CHAIRMAN: He can serve only for one year.

MR. SPENCER MILLER, JR.: Two Assembly elections in one year?

CHAIRMAN: One in 1948 and one in 1949.

MRS. JANE E. BARUS: If this goes into effect in November, the Assemblymen then elected should continue and then it would come out right in 1949.

MR. EGGERS: That wasn't what he said.

MRS. BARUS: No.

CHAIRMAN: He thinks that the people will have elected these Assemblymen for one year and that the Assemblyman elected in 1948 should serve for only one year.

MRS. BARUS: No. Well, there will be more Assemblymen elected in 1947, presumably. If the Constitution is adopted at the same time.

MR. EGGERS: If the Constitution is adopted in 1947. Suppose it isn't?

MRS. BARUS: Well, they would serve only for one year.

CHAIRMAN: You could put that in the statement; put it that way, instead of holding an extra election. I think that's a very good idea.

MRS. BARUS: They are confused between 1946 and 1947, I think.

MR. WILLIAM MILLER: The Constitution will not be adopted until November 1947.

CHAIRMAN: You can put it distinctly that if the Constitution is adopted on November 3, or whenever election day is, that the Assemblymen elected—

MR. SPENCER MILLER, JR.: The people that vote for the Constitution will see—

MR. J. SPENCER SMITH: When will the Constitution go into effect?

CHAIRMAN: Immediately.

Let us get on with this. Paragraph 6 (*reading*):

"In the event of a vacancy in the office of Governor, resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, the functions, powers, duties and emoluments of the office shall devolve upon the President of the Senate, for the time being; and in the event of his death, resignation or removal, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation or removal upon such officers and in such order of succession . . ."

MRS. BARUS: I think there should be a comma after removal, and "then."

CHAIRMAN: "Or removal—"

MRS. BARUS: I think there should be a comma after "removal" and then the word "then" inserted.

CHAIRMAN: (*Continues reading*):

"Or removal, (*comma*) then upon officers and in such order of succession as may be provided by law; until another Governor shall be elected and qualified."

MRS. BARUS: A "new" Governor.

CHAIRMAN: (*reading*):

". . . until a new governor shall be elected and qualified."

MR. GEORGE H. WALTON: I move this be adopted.

CHAIRMAN: As amended?

MR. WALTON: As amended.

(*Motion seconded and adopted*)

CHAIRMAN: Paragraph 7 (*reading*): .

"In the event of the failure of a Governor-elect to qualify, or of the absence from the State, inability to discharge the duties of his office, or impeachment, of a Governor in office, the functions, powers, duties and emoluments of the office shall devolve upon the President of the Senate, for the time being; and in the event of his death, resignation or removal, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation or removal, upon such officers . . ."

MR. WALTON: I think the word "then" should be inserted after "removal."

MRS. BARUS: What's that?

CHAIRMAN: "Removal, then." (*Continues reading*):

"... then upon such officers and in such order of succession as may be provided by law; until the Governor-elect shall qualify, or the Governor in office shall be acquitted, or shall return to the State, or shall no longer be unable to perform the duties of the office as the case may be, or until a new Governor be elected and qualified."

MR. SMITH: I move its adoption.

CHAIRMAN: Do I hear a second?

MRS. BARUS: Second.

(Motion carried)

MR. WILLIAM MILLER: There is one possibility that is not covered and possibly can't be covered: That is, when a Governor is unable, permanently unable, to perform his duties. In that event, of course, there should be a vacancy, but we never know how to determine that.

MRS. BARUS: Just the same thing as the Governor being "unable" and to try to determine that.

MR. WILLIAM MILLER: Yes, that's right.

CHAIRMAN: I think it's a very important thing, but how can we work something out? I would suggest this—I don't know if it will work—but if in the opinion of the majority of the Legislature the Governor, as the result of a prolonged absence from the State or being sick too long or even possibly mentally deranged, was incapable of carrying on the duties of his office—I don't know the word you would use—but if it were passed by a majority vote of the House and Senate and if the presentment were passed upon by the Supreme Court of the State—the Legislature would refer the matter to the Judicial Branch and if it agreed with the Legislature—then the Governor would be removed right away. I think it should be by a two-thirds vote of both houses.

MR. WALTON: I move that Mr. Miller be directed to draft such a clause.

(Motion seconded and carried)

CHAIRMAN: Paragraph 8 *(reading)*:

"In the event of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the next general election succeeding the occurrence of the vacancy unless the vacancy shall occur within sixty days immediately preceding a general election, in which case he shall be elected at the second succeeding general election; but no election to fill an unexpired term shall be held in any year in which a Governor is to be elected for a full term. A Governor elected for an unexpired term may assume his office as soon as his election has been determined."

(After discussion Mr. Smith moved the adoption of paragraph 8. The motion was seconded and carried)

CHAIRMAN: Paragraph 9 *(reading)*:

"The Governor shall, at stated times, receive for his services a salary which shall be neither increased nor diminished during the period for which he shall have been elected."

MRS. BARUS: I move its adoption.

(Motion seconded and carried)

MR. WILLIAM MILLER: Has there been any consideration given to some form which would describe the adequacy of his salary? I wonder at times whether the Governor receives the proper salary. Should we say an "adequate" salary?

CHAIRMAN: Aren't you asking for an awful lot of trouble?

MR. WALTON: I think the question of the salary the Governor receives, whether adequate or otherwise, should really be a legislative matter.

CHAIRMAN: I think we had that in mind—that it was up to the Legislature to fix the Governor's salary.

MR. WALTON: I move that this be left to the Legislature.

(Motion seconded and carried)

CHAIRMAN: Paragraph 10 *(reading)*:

"The Governor shall take care that the laws be faithfully executed, and communicate the condition of the State and recommend such measures as he may deem desirable by message to the Legislature at the opening of each regular session, and at such other times as he may deem necessary. He may convene the Legislature or the Senate alone whenever in his opinion public necessity requires, subject to the provisions of the Legislative Article hereof. He shall be the commander-in-chief of all the military and naval forces of the State and shall grant commissions to all officers elected or appointed pursuant to this Constitution . . ."

(General discussion)

CHAIRMAN: All right. Put a period after "State" and insert *(reading)*:

"He shall grant commissions to all officers elected or appointed pursuant to this Constitution."

Then the last sentence. I haven't read that yet *(continues reading)*:

"He shall nominate and appoint, with the advice and consent of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law."

(General discussion)

MR. WALTON: I move the adoption of paragraph 10, as amended.

(Motion seconded and carried)

CHAIRMAN: Paragraph 11 *(reading)*:

"The Governor may fill any vacancy occurring during a recess of the Legislature in any office which is otherwise to be filled by his appointment with the advice and consent of the Senate, or by appointment of the Legislature in joint meeting. An *ad interim* appointment to fill such a vacancy shall expire, unless a successor shall be sooner appointed and qualified, at the end of the next regular session of the Senate. The Governor may not thereafter fill the same office or position by *ad interim* appointment unless he shall have made a nomination to the Senate during the regular session and the Senate shall have adjourned without having confirmed or rejected the nomination so made . . ."

MR. WILLIAM MILLER: "... without either confirming or rejecting . . ."

CHAIRMAN: (*reading*):

"... without either confirming or rejecting the nomination so made. Any person who shall have been nominated for any office by the Governor who shall not have been confirmed by the Senate shall be ineligible for *ad interim* appointment to such office. The Governor shall make no appointment or nomination to office during the last week of his term."

MR. WILLIAM MILLER: You could strike out "who shall have been" and have it read, "Any person nominated for any office by"

CHAIRMAN: Make that "Any person nominated"—cut out the words "who shall have been." Shall I read that sentence as amended?

MR. WILLIAM MILLER: Yes.

CHAIRMAN: (*reading*):

"Any person nominated for any office by the Governor who shall not have been confirmed by the Senate shall be ineligible for *ad interim* appointment to such office. The Governor shall make no appointment or nomination to office during the last week of his term."

MR. SMITH: I move its adoption.

(*Motion seconded and carried*)

MR. SMITH: Mr. Chairman, before you read paragraph 12, you will recall that Senator Farley said something about three-fifths or two-thirds, and I was wondering whether you wanted to go all through this or not.

CHAIRMAN: Well, I think since we adopted the two-thirds rule, I got some statistics that are very interesting that concern the number of vetoes that were overridden in the last 15 years. I have three copies of this. I think maybe you two can read this, and you three this one, and Mrs. Barus and I can look on here. This goes back to 1933 inclusive, or 15 years, and the first column is the total number of bills passed each year and then totaled. The number of bills passed over a veto in the whole period of time was 40. The percentage of bills passed over veto was less than one per cent. That, however, doesn't signify anything to me because it only concerns that percentage of the total number of bills passed. What I would like to know is how many of those that were vetoed were passed. If you will go backwards: in 1947 it was Driscoll; in '46, '45 and '44 it was Edge; then '41, '42 and '43 it was Edison and we get the bulk of it. In '43 there were 2, in '42 there were 9, and '41 there were 12. Before Edison there was Moore, wasn't it?

MRS. BARUS: I think that must have been in Edison's term, that 12.

CHAIRMAN: Yes . . . Moore, and before Moore you had Hoffman. But the question is how many bills were passed over the Governor's veto?

Now, I would like you to know that Senator O'Mara, Chairman of the Legislative Committee, and I have agreed—and if you people

don't agree, let me know and I will pass your opinion along—upon the method by which the Legislature would call itself back in session for the purpose of overriding any bills vetoed by the Governor after the Legislature had adjourned *sine die*. The Legislature can only come back for that purpose if the sponsor of the bill makes a formal presentment to the President of the Senate and the Speaker of the Assembly; on that presentment both those officers sign a statement requesting the Governor to call the Legislature in session for the sole purpose of acting on the veto. The thinking on that is, why should we have a Legislature called back to work on a bill that is vetoed if the sponsor doesn't approve?

(There was considerable discussion on this matter)

MRS. BARUS: I move that the Committee recommend to the Committee on the Legislative that they include a provision giving the Legislature the right of self-call.

(Motion seconded and carried)

CHAIRMAN: Paragraph 12 *(reading)*:

"Every bill which shall have passed both houses shall be presented to the Governor; if he approve he shall sign it, but if not he shall return it, with his objections, to the house in whom it shall have originated, which shall enter the objections at large on their journal and proceed to reconsider it; if, upon reconsideration on or after the third day following its return, two-thirds of all the members of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered and if approved of by two-thirds of all the members of that house, it shall become a law; and in all such cases the votes of each house shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days, Sundays excepted, after it shall have been presented to him, the same shall become a law on the tenth day if the house of origin is not in adjournment on said day. If, on said tenth day, the house of origin is in adjournment in the course of a regular or special session, the bill shall become a law on the day on which the house of origin convenes after the adjournment unless the Governor shall return the bill to that house on that day. If, on said tenth day, the Legislature is in adjournment *sine die*, the bill shall not become a law unless the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment."

MR. WILLIAM MILLER: At the end of line 5, "whom" should be "which" and "their" should be "its."

CHAIRMAN: Line 5?

MR. WILLIAM MILLER: At the end of line 5, "whom" should be "which"; "on their journal" should be "on its journal"—"their" should be "its." Then there should be a period after "it" and a capital "I" in "If." On the next line, "after the third day following its return" should read "after the third day following the return of the bill." On the next line after, "of all the members of the house of origin" insert "of origin." On the next line it should read "together with the objections of the Governor."

CHAIRMAN: "... the objections of the Governor"?

MR. WILLIAM MILLER: Then on down it says: "on the tenth day if the house of origin is not in adjournment on said day . . ." Well, it can recess between adjournments, and also in the Constitution we use the word "recess."

CHAIRMAN: What language would you use? We want to agree on this language tonight.

MR. WILLIAM MILLER: Well, you could insert the word "temporary" before "adjournment."

CHAIRMAN: You think we should use "temporary"?

MR. WILLIAM MILLER: Yes.

CHAIRMAN: "... the house of origin is in temporary adjournment. . ." Then, down further, it should be "the house of origin convenes after the temporary adjournment . . ."

MR. WILLIAM MILLER: Right. Insert the word "temporary" three times.

MR. SMITH: I move for the approval of paragraph 12, as amended.

(Motion seconded and carried)

CHAIRMAN: Paragraph 13 *(reading)*:

"If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object . . ."

I would like to call your attention to this point. This morning I was discussing this matter with the technician. The way the old Constitution reads, and the way this reads at present, is that the Governor may object to—which in a sense means veto—any item in the appropriation bill, but he can't reduce it, which is ridiculous. So we make the suggestion that that should read as follows: "may object in whole or in part" which means he may reduce an item. *(Reading)*:

"... he may object in whole or in part to one or more of such items while approving of the other portions of the bill . . ."

MR. WALTON: Can't you say "may object in whole or in part to such items"?

MR. WILLIAM MILLER: Why not say "to any items"? You would leave out the words "to one or more of such."

MR. WALTON: Any is one or more.

MR. WILLIAM MILLER: That's right. Make it "to any such."

MRS. BARUS: I think it was better the way it was.

MR. WILLIAM MILLER: Make it "to any such item or items."

CHAIRMAN: What are we going to say now—"object in whole or in part to any such item or items"?

MRS. BARUS: That's it.

CHAIRMAN *(reading)*:

"... while approving of the other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of each item to which he objects, and each item or part thereof so objected to shall not take effect. A copy of such statement shall be transmitted by him to the house in which the bill originated, and each item or part objected to shall be separately reconsidered. If, upon reconsideration on or after the third day following said transmittal, one or more of such items or parts thereof be approved by two-thirds of all the members of each house, the same shall become a part of the law, notwithstanding the objections of the Governor. All the provisions of the preceding paragraph in relation to bills not approved by the Governor shall apply to cases in which he shall withhold his approval from any item or items or parts thereof contained in a bill appropriating money."

In other words that's exactly the same as the present Constitution but we give the Governor the power to reduce an item.

MR. SPENCER MILLER, JR.: In moving this, I suggest that we re-read it once more—not now, but have the technician read it once more and see whether in our effort to be too meticulous we may have used more words than necessary.

(Motion seconded and carried)

(Discussion off record)

CHAIRMAN: For the sake of the record, I will read the redraft which the technician has presented on succession. Section I, paragraph 5 *(reading)*:

"But no person who has served two successive full terms as Governor shall again be eligible for that office until the third Tuesday in January of the fourth year following the expiration of his second successive term in office."

MRS. BARUS: I move the adoption.

(Motion seconded and carried)

CHAIRMAN: The technician has also drafted the wording for Section I, paragraph 7. It reads, for the sake of the record *(reading)*:

"Whenever a Governor-elect has failed to qualify within six months after the beginning of his term of office, or a Governor in office has remained continuously absent from the State or continuously unable to perform the duties of his office by reason of mental or physical disability for a period of six months, the office shall be deemed to be vacant. Such a vacancy shall be determined upon presentment, by a concurrent resolution adopted by a vote of two-thirds of the members of each House of the Legislature, to the court of last resort of this State, and upon a finding and determination upon evidence by that court of such failure to qualify, absence or inability."

MR. SMITH: I move the adoption.

CHAIRMAN: Let's wait just a minute. This is an innovation. This never existed before in any other constitution of which I have ever heard. I think we might give it more than just a second thought.

MR. SMITH: Mr. Chairman, we gave it a great deal of thought before and the wording of it is exactly as we want it.

CHAIRMAN: All right. Any further discussion?

MR. WILLIAM MILLER: Before the question is raised, let's read that first clause again (*reading*):

"Whenever a Governor-elect has failed to qualify within six months after the beginning of his term of office, or a Governor in office has remained continuously absent from the State or continuously unable to perform the duties of his office by reason of mental or physical disability for a period of six months, the office shall be deemed to be vacant."

MR. WALTON: May I interject a question there?

CHAIRMAN: Colonel Walton.

MR. WALTON: Shouldn't the time the Governor remains continuously absent from the State be—well, he could be continuously absent for two weeks.

CHAIRMAN: For a period of six months. Doesn't that qualify it?

MR. WILLIAM MILLER: May I suggest the transposition of that clause "for a period of six months," because it seems to me—the question is going through my mind; in fact, I think it is what Colonel Walton had in his mind—that that clause which qualifies the continuous, let us say, performance of his function, that ought to be transposed a little closer, so that it is very clear that we mean his continuous absence from the State for a period of six months or his continuously being unable to perform the duties of his office by reason of—for such a period.

MR. WALTON: Why don't we do it the other way—"or whenever for a period of six months . . .?"

MR. WILLIAM MILLER: That's right.

CHAIRMAN: I think we want to make very sure that nobody is left in any doubt as to what we mean.

MR. SMITH: I move that amendment to the language.

CHAIRMAN: So that it now reads (*reading*):

" . . . or whenever for a period of six months a Governor in office has remained continuously absent . . . "

Well, let's repeat the whole thing:

"Whenever a Governor-elect has failed to qualify within six months after the beginning of his term of office, or whenever for a period of six months a Governor in office has remained continuously absent from the State or is continuously unable to perform the duties of his office by reason of mental or physical disability, the office shall be deemed to be vacant."

Motion?

(*Motion seconded and carried*)

CHAIRMAN: What have you next, Bill?

MR. WILLIAM MILLER: Section IV, paragraph 4 (*reading*):

"The Governor may cause an investigation to be made of the conduct in office of any State officer or employee except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. The Governor may, whenever in his opinion it would be in the public interest, require any appointive State officer or

employee in the executive branch of the State Government to submit to him a written statement or statements, on oath . . ."

It should be "under oath." Yes, "statements, under oath." The comma after statements is out; comma after "oath" (*continues reading*):

" . . . of such information as he may require relating to the conduct of their respective offices or employments. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer and continue the hearings because of misfeasance or malfeasance in office."

MR. SMITH: I move its adoption.

CHAIRMAN: Seconded?

MR. WILLIAM MILLER: Do you want to add "may remove any such officer or employee"?

CHAIRMAN: Yes, everybody seems agreed on that. That's a good idea.

MR. WILLIAM MILLER: And you will notice that we are limiting the clause to misfeasance or malfeasance, and you do not include nonfeasance. On the other hand, in the Article dealing with heads of departments you simply said "for cause," which would include any cause.

MR. SPENCER MILLER, JR.: I think "for cause" should be substituted for the misfeasance and malfeasance.

MRS. BARUS: I move that "for cause" be inserted and take out "for misfeasance and malfeasance."

CHAIRMAN: Take out?

MR. WILLIAM MILLER: ". . . the Governor may remove any such officer or employee for cause."

CHAIRMAN: Right. Leave out all that other?

MR. WILLIAM MILLER: Yes.

CHAIRMAN: ". . . the Governor may remove any such officer or employee for cause." Is that the motion?

MR. SMITH: Yes.

(Motion seconded and carried)

CHAIRMAN: That's a very good job, Mr. Miller, very excellent.

(Discussion off the record)

CHAIRMAN: Will you take notes on this, please? The gist of it would be, addressed to the people of the State of New Jersey (*reading*):

"Attached hereto is a tentative draft, changing sections of the old Constitution, of subject matter which has been assigned by the Constitutional Convention to the Committee on the Executive, Militia and Civil Officers, which Committee was appointed by the president of the Convention, Robert C. Clothier.

This memorandum, which is being sent out to the people of the State, is a tentative proposal only, but it will be the basis for future discussion. We are endeavoring to give this as wide examination and publicity as

possible. We wish to put everybody on notice that there will be a public hearing on this memorandum before the Committee on Executive, Militia and Civil Officers at the Convention Hall in New Brunswick at ten o'clock on *(such and such a date, as we will set in a minute)*. We request anybody interested, in favor of or against any of these sections, to come to express themselves at this hearing.

Respectfully submitted, and then the name of every member of the Committee."

MR. WILLIAM MILLER: There is one sentence that seems to me ought to be added, namely that "This is the tentative draft and it is subject to revision and modification, and will be subjected to revisions and modifications in the light of the hearings which are publicly held."

CHAIRMAN: Yes, that's the second thought. That's the second thought I left out. That's very good.

MR. WILLIAM MILLER: Subject to modification both by the Committee itself as well as, of course, by the Convention.

MR. EGGERS: Now, this is just a thought—

CHAIRMAN: Mayor Eggers.

MR. EGGERS: I don't know whether it is possible to work it out the way we are going, but it would make it a great deal easier for those who contemplated appearing here, if they had a comparable section of the old Constitution opposite the section we are changing, where that is possible.

CHAIRMAN: The trouble with that is there is so much of this stuff that isn't comparable.

MR. WILLIAM MILLER: We have three kinds of source notes, 1844, 1944, and now, and in some cases, where it is possible, I try to indicate the nature of the change.

MR. SPENCER MILLER, JR.: There is one other suggestion I want to offer. Your letter of transmittal, Mr. Chairman, might cover one other point: a reference to the fact that under the mandate of June 3, we are committed to the proposition of revising the old Constitution. That is, indicate the fact that this is a revision and that we do it in response to a public mandate. People might take the position that we are laying impious hands on the ancient charter.

CHAIRMAN: I think it is a good idea because I have heard some very vigorous remarks on that subject, to the same end.

MR. SPENCER MILLER, JR.: Yes, and I would think it might even appear in the very first part of your statement of transmittal that, responsive to the public referendum or the mandate of the people, as expressed on June 3, directing the assembly of a Constitutional Convention to revise the 1844 Constitution, the Committee on the Executive appointed—and so forth and so on. Perhaps that kind of thing, so that they realize what we are doing. We are

not attempting to preserve the old language; we are trying to revise the old document—make it a new and modern story.

CHAIRMAN: That is a very good idea.

MR. SMITH: What I was thinking about, in connection with these notes and the sources is, I am one of these persons, whatever you want to call them, who says, "I got this and I haven't got that, and I didn't get the sources." I come to this hearing and say, "Mr. Chairman, well, well, well, I haven't got this and I don't think it's fair to do that. You call this a revision and then you adopt that and we don't know." The only thought I had in mind in that connection is this; you can take it for what it's worth. If you send out this draft with nothing more, a person specifically interested would come and get the sources. But people will not have the excuse that we didn't give those sources, if they get that copy.

CHAIRMAN: Well, what's your point? Leave out the sources?

MR. SMITH: No, I don't mean that.

MR. CHAIRMAN: They will all receive copies.

MR. WILLIAM MILLER: I think, Mr. Chairman, you might even go further than that—not only say that they will receive copies, but copies of the sources are available in your public library in your community, or the *Legislative Manual*. Give them the references so that there is no excuse for any person not having access to the documents.

CHAIRMAN: As a matter of fact, every city of the State, of any size or importance, has a copy of the *Legislative Manual*. We can tell them the *Legislative Manual* contains a copy of the old Constitution.

MRS. BARUS: We can state: library, *Legislative Manual* or Secretary of State.

MR. WILLIAM MILLER: Here is a very good point. We are not revising the Constitution of 1944; we are revising the Constitution of 1844.

MRS. BARUS: Where do you get the 1944?

MR. WILLIAM MILLER: I think I referred to that—

CHAIRMAN: That's right; we should refer to 1844.

MR. SMITH: I move that the thoughts of the Chairman be adopted.

CHAIRMAN: As amended by various members.

MR. SMITH: Yes.

(Motion seconded and carried)

CHAIRMAN: I personally have confidence in our technician to put our sources in and I would be willing to grant him authority. How do you feel about that?

(Agreed to by all members)

CHAIRMAN: Any further discussion? All in favor, say "Aye."

(Chorus of "Ayes")

CHAIRMAN: Opposed?

(Silence)

CHAIRMAN: So ordered.

There is one last thing we have to do and that is set the date of the hearing. I would like to suggest Tuesday, the 29th of July, at 11:00 o'clock.

MR. WILLIAM MILLER: About the question of time, I just wonder how soon we will have this draft after it is received by the printer. Say Monday of next week; it may not even get out until the end of the week.

CHAIRMAN: Excuse me. Secretary Van Camp wants to know about the size of the pamphlet we are planning to send out.

MR. WILLIAM MILLER: There is no question, Mr. Chairman, but that we should print it, and print it in such form that people will find it easy to read.

(Discussion off record relative to size and printing of pamphlet)

CHAIRMAN: There is a motion on the table that we adjourn until the 29th of July at 11:00 o'clock for the purpose of a public hearing.

(Motion seconded and carried)

CHAIRMAN: Motion to adjourn is in order.

MR. SMITH: I move we adjourn.

(Motion seconded and carried)

(The session adjourned at 4:20 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 29, 1947

(Morning session)

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

PRESENT: Barus, Eggers, Feller, Hansen, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: I am going to ask you to limit your remarks to ten minutes, if you can. Frankly, I am going to shut you off at 15. The purpose is not to stop your talking to us, or to prevent discussion. We have many persons to be heard, and it is done in order that some people who want to speak won't have to wait so long. If, after we have gone through the roster, anybody who has been shut off wants to speak to us further, he will be permitted to do so. I'm only cutting the time down out of courtesy to other people. I'd like first to call on Attorney-General Van Riper.

MR. WALTER D. VAN RIPER: Thank you. You won't have any difficulty with me about the ten minutes. I'll be out in less than ten minutes. I'd just like to call the attention of the Committee to a situation here that I think I have a right to be interested in, because it is more or less in my department. That is that section of the draft which you have prepared, Section II, which provides for the appointment of county prosecutors. You have copied out of the present Constitution the language which is as follows: "County prosecutors shall be nominated and appointed by the Governor"—I'm not quoting accurately—"whose term of office shall be five years." I would like to suggest to the Committee that that be amended so as to—

CHAIRMAN: Excuse me, Attorney-General, will you mind giving us the page so that we can follow you more closely?

MR. VAN RIPER: Yes, it's page 12, Section II, with reference to the appointment of prosecutors. I would like to suggest to the Committee that the language be amended so as to provide, in line with what is the common practice today with all of our statutory officers, that their terms will be for five years and until their successors shall be appointed and qualify. Practically all state appointments today

are on that basis. I think the reason for it in the case of the prosecutors is particularly important. A prosecutor may be engaged in the trial of an important case. It may have two or three weeks to go yet, but his term may be up. The Governor may have decided to reappoint him, or he may not have decided. He may not have made up his mind. At any rate, the prosecutor ought not to be taken out of the trial of that case, in the midst of it.

Another situation might arise. A prosecutor's term might expire two or three days after a Governor comes into office. It might be that the Governor hasn't had an opportunity yet to acquaint himself with the prosecutor. It might be that he doesn't know him personally. The Governor may very well say, "Well, I'd like to see how this fellow works out. Maybe I'll reappoint him. I don't know. Let him stay on there for a month or six weeks, and see what happens."

Another situation: a prosecutor's term may be about to expire, and the Governor may have made up his mind to reappoint him, and someone may file charges against him with the Governor—make allegations against him. His time is up tomorrow. The Governor might say, and probably would: "I want to look into these charges. There may be something to them, there may not be. I don't want to do this man an injustice, but his time is up tomorrow." It may be, because there isn't time to investigate properly, that an injustice is done to a man and he is turned out of office and isn't reappointed, whereas he otherwise might be.

I can't see any objection to my suggestion. I imagine there just isn't any. As I say, and as you gentlemen who are members of the Legislature know, it is the common practice today in establishing departments and so forth, to fix a term for a period of years and until their successors are appointed and qualify.

Then, one other thought that I have. Mr. Chairman and members of the Committee, you say in the same section, referring to prosecutors, that they shall be removable in a manner to be provided by law. Now, I haven't any objection to prosecutors being removed, if they should be removed. But I think that prosecutors and the community are entitled to some certainty about it. They are entitled to know on what basis they may be removed. I think so long as the Constitution provides for removal powers, that it ought to say on what basis they should be removed, and who shall have the removal power. I don't know. You don't know. Maybe we have a fairly good idea what the present Legislature may do, or the one next year, or the year after, but ten or fifteen years from now I don't know where the Legislature may place that removal power. They may say that a prosecutor may be removed by a board

of freeholders, by a county judge, by an Attorney-General, by the Secretary of State. I don't know what they might say.

I think it is in the interest of sound law enforcement that there be some certainty about it. Personally, I think if they are going to be removable, they ought to be removable for some definite reason—misconduct in office amounting to misdemeanor, or whatever the Committee feels is a justification for removal—and that they should be removed either by the Governor or by the Supreme Court. That concludes my testimony. I'll be glad to answer any questions.

CHAIRMAN: Thank you, Mr. Attorney-General. Members of the Committee, if you want to ask a question just raise your hand and the page here will transfer the loud speaker to your desk. Would any member of the Committee like to ask the Attorney-General a question?

MRS. JANE E. BARUS: Attorney-General, I have heard this same removal clause criticized, too, on the ground that it might be done without due process, or without a fair hearing, and so on. Would you like to outline, for the information of the Committee, what you think would be a fair removal process, that might be added here?

MR. VAN RIPER: I think it would be a fair removal process to subject them to removal on the same basis on which constitutional officers and other civil officers of the State are liable to impeachment. I think that your provision in here on impeachment is perfectly all right. I think it is very fair, very honest, for misdemeanor—whether in connection with the conduct of their office or otherwise. I personally would think that was perfectly fair to everyone concerned. But I think that the people who have the power to pass upon that removal and to adjudicate it ought to be defined in the Constitution. My personal thought is that it ought to be the Governor or the Supreme Court.

MRS. BARUS: As an officer of the government he would be liable to impeachment with cause.

MR. VAN RIPER: He would be liable to impeachment.

MRS. BARUS: It wouldn't be necessary to put that in.

MR. VAN RIPER: That's right, even without this.

CHAIRMAN: Are there any other members of the Committee who would like to ask the Attorney-General a question?

(No response)

CHAIRMAN: If not, thank you very much, sir, for coming before us.

I'd like to call on Mr. James Kerney who will speak for the New Jersey Committee for Constitutional Revision.

MR. JAMES KERNEY, JR.: Mr. Chairman, Mrs. Barus, and gentlemen:

I represent the New Jersey Committee for Constitutional Revision, which consists of, as perhaps most of you know, a group of state-wide organizations: the State Federation of Labor, the State Federation of Women's Clubs, the Association of Real Estate Boards, the Taxpayers' Association, the Council of Jewish Women, the Consumers' League, the American Association of University Women, State Federation of Colored Women's Clubs, League of Women Voters, State CIO, League of Women Shoppers, and Council of Churches. We are in some ways a people's lobby. While we have widely divergent interests, we have agreed on a minimum program of constitutional reform. I am here in many ways in a congratulatory sense, because we are in complete agreement with the basic changes you have made.

It's a part of the democratic balance that is our constitutional government that there should be created checks and balances among our governmental departments. One of the great criticisms of the present Constitution of New Jersey has been the fact that the Governor was so powerless to be a fully effective administrator. There is a constant argument, of course, between those who desire a powerful Executive and those who see the democratic need for a check and restraint upon the executive powers. I believe that you have in your tentative draft drawn exactly the fine line of balance between those two views. I want to stress particularly the importance that I attach to the two-thirds veto which you give the Governor. The fact that the Governor's veto now assumes a greater power is a great strengthening of gubernatorial power, coupled with the new administrative power you give him in the creation of the 20 departments. I wish to congratulate you, too, on the limitation you have put on the number of departments, for it is inconceivable that there should be a need for more than a maximum of 20 major departments.

There has been considerable discussion over the right of the Governor to succeed himself. Our groups feel that the Governor should have the right to succeed himself once. That is a perfectly proper democratic grant to give the Governor, who, if he has done a good job, will get the approbation of the public at the polls, and will have the right to succeed himself once. At the same time, we see merit in limiting the Governor to two terms, so that there can be no accretion of power in the hands of any one man. It is a perfect, democratic balance. We have asked a representative of labor, Mr. Carl Holderman of the State CIO, and a representative of business, Mr. F. E. Schluter, the President of the Thermoid Company, to come here today to join in this testimony, and with your kind permission we have also asked two experts to come this afternoon, Dr. Thomas Reed, perhaps the greatest authority in this country on governmental administration, and Dr. George Graham, head of the

Princeton Department of Politics, to add their testimony. I'm grateful to you for your kindness in receiving me.

CHAIRMAN: Thank you very much, Mr. Kerney. It is indeed a great pleasure—I know I speak for the Committee—to be congratulated upon our labors. All of the letters have not been in a similar vein, which is to be expected. Any member of the Committee like to comment on Mr. Kerney's remarks?

(No response)

CHAIRMAN: If not, again thank you. . . We will call on Mr. Carl Holderman, President of the CIO.

MR. CARL HOLDERMAN: Mr. Chairman, and members of the Committee:

I come here today not as an expert on the Executive Department, but as an elected spokesman for 250,000 CIO members in this State, who do have some views upon what kind of a Constitution they would like to see, and what will best represent the interests of the people. I want to say first that the Committee has done a very excellent job, in our opinion, on the tentative draft of the Executive Article, and we feel that it will make a distinct contribution to better government in the State of New Jersey. I should like especially to comment on three of its provisions.

First, the proposal that the Governor shall have a four-year term of office and shall be permitted to succeed himself at least once. We believe that that this is a good provision. The days when we were afraid of a monarchy arising in this country have gone. We believe that the elected representative, who is elected on a State-wide basis, should have the opportunity of presenting his record to the people in a subsequent election for their approval or disapproval; and that the only way that such approval or disapproval of his administration can be expressed is if he is permitted to go before the electorate again for election to the same office.

The second provision that I should like to comment on is that requiring a two-thirds vote to override the veto of the Governor. We think that this is a decided improvement in the democratic process. The Governor of the State is the only representative who is elected by the people from all parts of the State. He represents every particular section of our society in every part of the State. A two-thirds vote should be required so that any issue of dispute between the Legislature and the Governor would have the benefit of his broad views as against the sectional views of the representatives who are elected from a subdivision of our electorate. Therefore, this is an excellent provision to include in the Constitution.

The third provision that I should like to comment on is the restriction of the number of departments to 20. It seems to me that the functions of State Government can very well be carried on with-

in this limitation. Our State Government is restricted in its area to a relatively small part of this country. Its duties are not so complex, perhaps, as the Federal Government's, and its business certainly could be carried on with not more than 20 administrative heads. There has been some question as to whether or not that should be incorporated in the Constitution. We believe it should, because there is a tendency on the part of democratic government to expand itself and create more and more committees and more and more administrative bodies. A typical example is the present Congress of the United States, which streamlined itself in the last session, limiting itself to 30 or 40 committees for more efficient government. Then, in this session Congress expanded even beyond the number of committees it had before. I believe the latest figure is 102 instead of the 75 that previous Congresses had. It is to be noted also that the Committee on State Government of the National Municipal League has also proposed this as a part of its "Model Constitution." So, we are thoroughly in accord with this provision.

I want to conclude by repeating again that you have done an excellent job. There is very little to be criticized, as far as we are concerned, in the Executive Article, and we hope that the tentative draft, as proposed, or with very little change, will be reported finally to the Convention.

CHAIRMAN: Thank you very kindly, Mr. Holderman. Would any member of the Committee like to comment on any of Mr. Holderman's statements? . . . Judge Feller would like to ask you a question, Mr. Holderman.

MR. MILTON A. FELLER: Mr. Holderman, I'd just like to get your reaction to a provision which is related to something that you have mentioned. As you said, the constitutional revision provides that the departments shall be consolidated into not more than 20. There is also a provision that the Governor may, from time to time, appoint such state officers as he shall select to serve as a Cabinet. That refers to any state officers. Do you think that the provision should remain the way it is, or that this Cabinet should be restricted to the heads of the principal departments that you mentioned?

MR. HOLDERMAN: I think the Governor ought to have the opportunity to select from among the department heads those whom he feels most dependable and most intelligent to advise on governmental affairs.

MR. FELLER: In other words, so far as you are concerned this paragraph is satisfactory?

MR. HOLDERMAN: Yes.

CHAIRMAN: Any other questions?

(No response)

CHAIRMAN: Thank you very much, Mr. Holderman.

Mr. Schluter, President of the Thermoid Company, representing the manufacturer's group.

MR. FRED E. SCHLUTER: Mr. Chairman, and members of the Committee on the Executive:

I would like to say as indicative of my attitude on the document you have produced that I consider it a distinct honor and privilege to come before you. Secondly, I would like to point out that officially I represent no group. I come as a citizen, as a head of a business in Mercer County, a business with which the Chairman is acquainted. I don't pretend to profess to be an expert either on the old Constitution or the draft now proposed. Certainly, as a businessman I have not been as close to government as the Senators who are represented here on the Committee and also in the delegation.

I have read the proposed report and I have read comparisons of this draft proposal as against the present Constitution. I think it is a fine composite document. I think, as Jim Kerney said, it represents a fine median between the two viewpoints as to increasing executive authority and restricting or curbing the powers of the Legislature. I don't think that either extreme prevails, as I interpret the tentative draft that has been proposed. I'd like to touch on both points of view.

First, as a business executive, I recognize that the Governor has a responsibility to the electorate for the job that he does. I know, as a business executive and a businessman, and as all businessmen, we want efficient government at as low cost as possible in the State of New Jersey, as well as we do nationally. I don't think that we can charge a Governor with that responsibility unless he also has the authority to execute either the will of the people or his own views, and he takes the responsibility for those views at the polls in any election. I know that as an executive in business I would not want the responsibility to the board of directors or the stockholders, nor would any executive of any publicly-owned company, if he didn't have full authority to execute policies that he thought were in the best interests of the stockholders, as well as employees and other interested parties.

From the other viewpoint, the standpoint of any restriction on the Legislative Branch, I have had deep interest in the trend of the National Government and also state governments, and I believe sincerely that all legislation should originate with the Legislature. I don't think there is anything in this document, nor will it be in any Legislative Committee report, that would in any way curb or restrict that prerogative. We believe very sincerely and deeply in the three divisions of government, namely, Judiciary, Legislative and Executive. The chief job of the Executive is to execute the laws

with as much authority as is possible because of the responsibility he takes.

Those are the practical observations I want to leave. I can do nothing but add applause for the great effort and the apparently fine fruits that seem to be born in this tentative draft proposal. I think the startling new feature is the quality of the document. I'm quite confident, having been at various organization meetings for the purpose of evolving and developing a program, that no single representative ever comes out exactly with what he as an individual would have written. But this Executive Committee tentative draft, I think, embodies a very fine composite cross-section viewpoint of the best that we can hope for better state government.

CHAIRMAN: Thank you very much indeed for your kind remarks, Mr. Schluter. Any member of the Committee like to address a comment on Mr. Schluter's remarks?

(No response)

CHAIRMAN: It not, again thank you for appearing before us. I want to say to the veterans that we are only going to ask one more person to speak before we come to them. I'd like to call on Mrs. Heinz of the League of Women Voters.

MRS. RACHEL HEINZ: Mr. Chairman, members of the Committee *(reading)*:

"The League of Women Voters of New Jersey wishes to commend the Committee on the Executive, Militia and Civil Officers for the very excellent tentative draft proposals which it has submitted for public review, criticism and suggestions.

As is to be expected, this draft does not coincide at all points with the recommendations made to the Committee by the League. We should have preferred, for instance, that a constitutional provision for the method of selecting county officers be included, but that these officers not be mentioned by name in order that a greater degree of county home rule might be possible. We would also have preferred another method for filling a vacancy in the office of Governor than the one provided. There are other differences. But in spite of these it is our opinion that the many excellent provisions contained in the tentative draft far outweigh our few criticisms.

We wish to express our highest approval of the provisions that the term of a Governor be four years and that the people should have the right to reelect a Governor for one successive term; that a two-thirds vote of the Legislature be required to override a veto; and that the principal administrative departments be limited to 20, under the supervision and control of the Governor, with their heads, where single executives, nominated and appointed by the Governor, with the consent of the Senate, to serve at his pleasure.

The right of one successive term gives the people an opportunity, long denied them, to express direct approval or disapproval of an administration and thereby give unmistakable instructions to the next administration. The two-thirds vote required to override a veto implements the accepted theory that there should be checks and balances between the three main branches of government. The limitation of principal departments to a number which can be supervised adequately by one Chief Executive, plus the provision that their heads shall be really under his control, should greatly increase the efficiency and responsibility of the Executive Branch of the government.

In addition to the provisions stressed above we should like also to commend the following: the extension of time provided for gubernatorial consideration of bills, both during a legislative session and after adjournment *sine die*; the power granted to the Governor to object to the amount of appropriation items as well as to veto the entire items; the granting of the power of pardon to the Governor exclusively; the establishment of a parole system by law; the omission of specific militia officers; the requirement of approval by the Governor where boards or commissions appoint a principal administrative officer; the granting of investigatory powers to the Governor; the permissive rather than mandatory treatment of veteran's preference in Civil Service; and the placing of gubernatorial elections in odd-numbered years.

Taken as a whole the tentative draft proposals demonstrate a high degree of statesmanship on the part of the Committee on the Executive, Militia and Civil Officers. The Committee has taken care to remedy not only the most glaring defects of our present Constitution, but has also given attention to the many details which needed correction. It is to be congratulated upon the way it has fulfilled the high responsibility placed upon it by the citizens of New Jersey. In the considered judgment of the League of Women Voters the Constitution would be immeasurably improved if these tentative draft proposals were adopted by the Convention."

I should also like to say that we think you may be interested to know that there are present here today 41 members of the League of Women Voters from 28 individual communities. They are here to show their interest and approval of the proposed tentative draft. Since your time is limited and since they subscribe to the statement which I have just made, they will not speak today. But I will leave their signatures with the Committee. Thank you.

CHAIRMAN: Thank you very much, Mrs. Heinz. We certainly want to thank the League of Women Voters for their tremendous interest all through this time when we have been debating the Executive Section, and I want to thank the other ladies for coming here and showing their interest. Does any member of the Committee like to ask Mrs. Heinz any questions? If not, thank you again very much for appearing, Mrs. Heinz. We'll accept the signatures and put them on file.

Mr. William McKinley . . . Mr. McKinley is a member of the National Executive Committee for New Jersey of the American Legion and has agreed to act as a sort of chairman for the veterans' groups. I will now ask Mr. McKinley to come to the microphone.

MR. WILLIAM G. MCKINLEY: Mr. Chairman, the first speaker in this group will be Mr. Chris Edell, Commander of the Disabled American War Veterans, Department of New Jersey.

CHAIRMAN: We'll be very glad to hear from you, Mr. Edell.

MR. CHRIS EDELL: Mr. Chairman, members of the Executive Committee:

I am appearing here today as a Department Commander of the Disabled American Veterans of the State of New Jersey, particularly referring to the military section of the Executive Article. We believe, however, that as veterans of all wars, we feel it would manifestly be unfair at this particular time to take away the tenures that

have been enjoyed over a period of years by those men who have served in the armed forces and are now serving in the military of the State of New Jersey. They have given of their time and of their effort in behalf of a great military organization. That they have served faithfully can be clearly exemplified by the fact that they have served in World War I and World War II. Looking forward, however, to the future and being aware of the fact that the services they have rendered entitled them to promotions, we feel the tenure should always apply where men are appointed strictly according to merit and fitness. We believe, naturally, that promotions should go to those veterans who are in the National Guard.

We can't emphasize too forcefully our dissent to any change in the military set-up in the State of New Jersey dealing with these men who have served and done a remarkably good job. They are certainly entitled to tenure. We feel also that every formidable veterans' organization in the State of New Jersey is unalterably opposed to this present recommendation of the Committee to give the Governor the right, at any time, to remove without just cause. You have a remedy, if these men have been appointed according to fitness and qualification, by a court martial. We feel that once they have been appointed and have done a good job, if there is something that happens, may I again emphasize and reiterate that you have redress by a court martial?

I want to say I appreciate the fact that you gave me the opportunity to address the Committee. I am indeed appreciative.

CHAIRMAN: Thank you, Mr. Edell. Does any member of the Committee want to ask Mr. Edell a question? Or comment? . . . Colonel Walton?

MR. GEORGE H. WALTON: Sir, in saying you don't wish any change, I don't believe you mean you think the present provisions in the Constitution should continue as they are. They provide that removal may be by court martial only, which would, in effect, perhaps leave an officer commanding a company of the National Guard who—and this is going pretty far—might be legless, for example, or might be 80-some years of age. When you say tenure, you mean that there should be some provision in there that officers should only be removed by action of a court martial or an efficiency board, or something of that sort?

MR. EDELL: That is correct. I want to emphasize that. Keep in mind, too, that the Federal Government today is taking in amputees, men who have served their country during the time of war, and it feels that they are qualified to serve in the Regular Army. We can't emphasize too strongly that under no circumstances, just simply because of a change in the government, should an officer who

served efficiently during his term of office be removed from office. He should enjoy tenure.

CHAIRMAN: Mr. Edell, I would just like to point out—I think I am speaking for the Committee—that in our discussions we also believe in the principles that you enunciated, and we also believe in them with reference to civil service as well as to the militia. You will not find any mention of tenure in the civil service section of this Article. We believe that tenure is a matter for legislative enactment and we believe that tenure should be taken care of at the legislative level. That is the reason why the Executive Committee, with no idea other than what you have said, believing in the principle of what you have said, has left it to the Legislature to enact its laws about tenure as the Legislature has done in respect to civil service.

MR. EDELL: Mr. Chairman, it is the intent of the Committee, then, that men who have been appointed in the National Guard in the State of New Jersey and have enjoyed tenure are to continue to enjoy tenure?

CHAIRMAN: I think that we can safely leave it up to the Legislature. I think it has been fair to the veterans in the matter of tenure and priority rights. The legislation has been passed. No one can deny that. Nor can he deny that it has been fair to the civil service people in the matter of tenure. In fact, a fair number of bills are enacted every year in the Legislature which protect people on that basis.

I only mention it in this way so that you understand that the Committee has discussed this thing very thoroughly. We agree with what you say in principle, but we possibly disagree in method. We think it should be at the legislative level and not mentioned in the Constitution. We did not mention it with regard to the Civil Officers section.

MR. EDELL: Thank you.

CHAIRMAN: Does anybody else like to ask Mr. Edell any questions? . . . Thank you, sir. . . Mr. McKinley.

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

I am William G. McKinley of 44 Kensington Avenue, Jersey City. I am representing the Department of New Jersey of the American Legion representing its National Executive Committee. I have also served for more than 24 years in the National Guard and was also in the federal service in World War I.

The concern of the American Legion for precise statement in the Constitution respecting the militia arises from the nature of warfare as it is today. The American Legion is also concerned because of the complicated method of organizing for the national defense,

particularly as it concerns the National Guard when federally recognized. We are also concerned with providing for the safety of the State of New Jersey. The greatest change in the technique of war is in the speed with which armies move, the lightning-like execution of a military task, and the extreme detail and precision of cooperative effort. There is no lull in the effort once battle is joined and almost no opportunity to rectify a fundamental error once it has been committed. The American Legion asks the question: are we committing a fundamental error in the design of this Constitution so far as military planning is concerned? We think that such possibility is contained unwittingly in the suggested provisions of Section III of the Executive Article.

Let me analyze, briefly, the cause of our concern. The militia, or the general citizenry of the State, has historically been the basis of defense, much less the basis of aggressive military force. The underlying theory has been the embattled farmer or the hardy frontiersman who is always ready and armed for any event—the thought that a million men will spring to arms at a moment's notice in defense of home and fireside. These are very beautiful words that come down to us from our colonial history. They are meaningless today. But the concept of the organized militia, namely, the local companies of citizens who once drilled in the public square, still persists, although two World Wars should have disillusioned us. The organized militia, now constituted as the National Guard and the Naval Militia, both state militia organizations, and probably a vast national militia in the form of an organized reserve, is something entirely different from the marching clubs of the Civil War and the Spanish War days. National defense under the Federal Government has integrated all of the organized army groups into unity as the Army of the United States. Similarly, the Navy has integrated the Naval Militia and organized Naval Reserve, with specific assignments when drafted in federal service in time of war. In the following discussions, all argument for the National Guard holds for the Naval Militia with equal force, varying only as to duty.

The National Guard still enjoys the status of state troops in time of peace and is the military force of the State against insurrection and rebellion. The Governor is still its Commander-in-Chief in time of peace. When the National Guard is called into federal service in defense of the nation, he remains as Commander-in-Chief to reorganize a militia within the State and for the safety of the State. But even these home guard organizations are interlocking for final effort to defend the nation as a whole. They must, therefore, be organized for this purpose, otherwise they become little better than guerrilla bands. It is also of the utmost importance to keep one fundamental political concept in mind in reasoning out this ques-

tion of the State Militia. This concept is inextricably woven into our whole philosophy of government in the United States. At the risk of imposing upon the patience and good nature of this constitutional sub-committee, I mention it because I have not read or heard of your considering it in this connection.

The American people are not militaristic. We are militant and we are fighters, but militarism as such is antithetic to our political philosophy. From the very founding of our colonies, through all of our history as a nation, the raising and maintenance of troops, particularly in time of peace, has been fundamentally opposed by the people. The underlying reason is fear for our political freedoms, fear that a military force in the hands of a tyrant might lead to subjugation of the people and dictatorship. Furthermore, the people demand the right to keep and to bear arms. The second amendment to the Federal Constitution, the second item in the Bill of Rights, so states. Constitutional authorities and even our courts have interpreted this right as securing to the people a means of defense against aggression by hostile foes from outside our borders. Much of our federal and state military law stems from this article.

But if I interpret my history correctly, there is a far more subtle motive included in the simple language of the article. History records that a first step towards political conquest of the people is to minimize their ability to resist the taking over of the government, such as Hitler did in Germany and Mussolini in Italy. It is likewise the history of many of our own national neighbors in this hemisphere. In other words, the subtle purpose of which I speak is the right of the people to a defense against political aggression from within our country. A terrible thing to contemplate, but there it is. The political development of our country has been able to battle out political disagreements with ballots rather than bullets. The reason is very simple. Both of our great dominant political parties base their separate philosophies upon a common concept of democratic process.

The effect of this has been to minimize fear of a turnover of government by military force. As we have progressed in development, we have created police forces to regulate our internal affairs and the successful use of police forces has in turn allayed our fears of a military junta. For example, in New Jersey we have not used military force in the suppression of civil disturbances in over 50 years. Can we continue a complacent attitude in considering the need for a military reserve under state authority in time of peace, or in the development of a state force as part of our contribution to national defense? Has all threat of orderly government from within as well as without been removed? With a prayer in our hearts for continued political peace, we must be warned that all

threat to our institutions is not removed. There are subversive elements in our country dedicated to its destruction by force and violence. This is serious enough by itself, but contemplate what happened in France, Belgium, Holland and Poland when such elements keyed and timed their action with aggression from without those countries.

We must not trifle with idealistic theories, but must get down to hard facts. New Jersey has been most fortunate in a continued procession of Governors who were thoroughly American patriots and unswerving in devotion to our basic American political philosophy. We pray for a continuance of statesmen and patriots for our leaders. But we cannot go blindly into the future, trusting to chance alone. While we have given into the hands of our Governors great powers and trusted them as individuals, we have always restricted them in the exercise of arbitrary military powers. I have pointed out certain responsibilities on the part of the State in the common defense of the nation. I have pointed out certain dangers to the State and the nation from within.

With these in mind, may I ask these questions? In your proposal to revise the military provisions as suggested, have you gone too far in your search for a simple statement? Have you unwittingly placed in the hands of a single man a terrible power to destroy not only our State but the nation as well? Have you unwittingly removed to a remote place a power which the people wish to retain, namely, control of the military under the law?

You have wisely eliminated certain outmoded theories and have made possible a major reform of the military establishment. I refer to the elimination of the elective system of officers and non-commissioned officers. The system was archaic. It did admit, in fact it was the bane of the officer corps, in that it brought into the service men incompetent and unfitted for military command. But, nevertheless, this system, by its presence in the old Constitution, is evidence of the desire of the people to have a hand in the control of the military force. I urge that you do not totally abandon this right of the people to be assured against passing command of the militia into the wrong hands.

If I reason correctly, under your present proposal, taken collaterally with paragraph 2 of the Schedule, you have apparently abandoned all test of fitness and qualification of militia officers and taken away assurance of tenure of office. I do not think you intended to do so, but in effect you place in the hands of one man, the Governor, the right arbitrarily to appoint and remove officers. This is a most dangerous power. It is the power to destroy the whole military force and could, if properly timed at a critical moment, destroy the State and possibly the nation. I am not so concerned with the

purely capricious appointment by the Governor of some dallying courtier to rank in the militia. We have had Sea Girt colonels before. I have, frankly, tripped the merry whirl at Sea Girt myself. These parade-ground soldiers are not a bad lot and while they may step off with the right foot or salute with the left hand, or get their spurs caught in the rung of a chair, they do add glamour to the social scene. Certainly none that I have ever known constituted a threat to our political security. The worst that they have done is to disturb the peaceful evening with not too harmonious song or cause the local recorder some trouble with traffic violations. This is something which is typical Americana and, if not carried to ridiculousness, is inconsequential.

However, should political misfortune attend us in some election and we acquire a Governor not sympathetic to our political system, he could strip the militia of all officers, particularly commanders, and replace them with officers of his political beliefs. If this were timed coincidentally with a national emergency, it would have most serious consequences. Recall that Blum did just that when the Popular Front government came into power in France. All officers not of socialistic persuasion were removed from the service or sent to duty in remote places. It was all very fine from a political point of view but when war came and Hitler's panzers began to roll, the incompetency and inefficiency and unsoldierly officer corps brought the French army to defeat at Sedan. Even old Weygand, brought back in a hurry from Africa, couldn't save them.

I have pointed out that troops have not been used in civil disturbances in New Jersey for 50 years, but the power to use them still is in the hands of the Governor unless carefully regulated by law. Consider also a Governor not necessarily a subverter, but an idealist or a rocking-chair strategist who might decide to reconstitute the militia according to some non-professional idea. This would bring him, in the case of the National Guard, in conflict with the Federal Government and play hob with the whole of national defense.

This would be very dangerous. New Jersey is one of the most critical areas on the Atlantic Coast. It dominates the coastal plain. It lies between two great and most important strategic centers, the Port of New York and the roadstead and the Port of Philadelphia. Across the State are the main lines of several trunk railroads to the South and to the West. Our broad highways are definitely military assets. Most important wire communication systems to the South and West cross New Jersey. New Jersey is likewise one of the most productive states in the manufacture of munitions. In the last war, we produced about four billion dollars of military supplies. Historians say New Jersey was the highway of the Revolutionary War.

It is still such a highway. New Jersey is vulnerable to attack from the air and from the sea. It would be the most logical area to seize in an invasion or, in a military sense, to isolate from the main battle. The loss of New Jersey in the defense of the United States would serve to cut New England off from the South and force a long and poor communication northward in order to maintain contact with the West. I point this out merely to give emphasis to New Jersey's military importance.

Our National Guard is an M-day force; that is, it is intended for instant mobilization and ability to take the field without further training or preparation. The organization, training, and discipline of the National Guard is dictated by the overall national defense plan. We cannot fail in our part without dire results to our country. The power to disrupt and disorganize this force is too great to be given to one man.

I believe, therefore, that constitutional restriction should be placed upon the Governor in command of the organized militia. Its organization, training, discipline and regulation should conform to that of the armed forces of the United States. To secure, in some measure, the right of the people to control the military organization, I believe the Legislature should be required to lay down the exact powers of the Governor and to prescribe the discipline of the state forces. This would mean at least that no major disruption of the militia could take place without the knowledge of the Legislature and of the people. It would assure the appointment of officers according to fitness and permit their removal for incompetency by law rather than arbitrary power vested in one man. I believe that all commissioned officers should be continued in authority indefinitely according to competency, as established by law and regulation, and promoted according to merit rather than favoritism. I see no objection to the Governor appointing his own military staff as his personal advisors, but such a staff should have no dual function of command. Such a staff can be of great aid to a Governor if his selections are trained and proven military men, and can also be a terrific headache to the troops if they just come along for the ride. I know—I have served on such a staff.

If these thoughts can be incorporated in the Constitution and these restrictions and specifications carried out by law, and if the Legislature is made responsible in a measure for the protection of the political rights of the people, I sincerely believe a thoroughly competent and professionally capable militia can be developed and maintained. What we seek is a military servant of the State and its people, not a creature to rise up to be our master or a craven to fail us in time of great peril.

Mr. Chairman, in order that we may put our statement in a sug-

gested revision of Section III of the Executive Article—largely to put our ideas down in simple form and so that you may understand it—I will read what we suggest (*reading*):

“Section III.

1. Provision for organizing, inducting and arming a militia or a civil defense force shall be made by law. The organization, training, discipline and regulation of the National Guard and Naval Militia as components of the armed forces of the United States shall conform to that prescribed by the Federal Government.
2. The Governor shall be Commander-in-Chief of the militia and shall appoint all officers according to law. All commissioned officers, when appointed and commissioned, shall continue in authority until relieved from duty or separated from service according to law.
3. The Governor may, by executive order, organize and appoint a military staff to serve at his pleasure, to aid him in the administration of military and naval affairs or other security responsibilities.”

Now, you may notice that I have introduced a new thought in here, namely the civilian security force. I happen to know, Mr. Chairman, that the Federal Government, particularly the War Department, is currently considering the organization of a civilian defense force under the Federal Government, similar to that which we had in the last war. I believe that just the mention of that fact in our Constitution is rather essential so that the right of the State to have something to say with regard to the development of those forces should be retained. I predicate that on the final article of the Bill of Rights, I think it's the Tenth Amendment, which say that all rights not delegated in this Constitution, meaning the Federal Constitution, shall be reserved to the states or the people. I think the State should reserve the right to have something to say about the organization of civilian defense forces as part of the whole as national defense.

CHAIRMAN: May we have a copy of that? . . . Thank you. Would you submit to some questions, Mr. McKinley?

MR. McKINLEY: Yes, sir.

CHAIRMAN: Do any members of the Committee want to ask Mr. McKinley any questions? . . . Colonel Walton.

MR. WALTON: Sir, I like your military section very well. But I cannot see that it varies, except in the wording, very greatly from the section that we have in the Constitution. Certainly your ideas and aims are the same as those of the members of this Committee. You said that the Governor had the right willy-nilly to appoint officers under the section in the proposed Constitution. May I point out to you that the wording is somewhat similar to that in your form? That is, that all other commissioned officers of the militia, with the exception of general officers and flag officers, shall be appointed by the Governor, and then the words “according to law” were added, it having been the intention of this Committee that all

the requirements of merit would be set up under that wording by the Legislature.

MR. McKINLEY: I agree with you, Colonel Walton, and I believe that that would be the sincere intent of this Committee. But we are writing a Constitution that may endure for several years, or maybe another 100 years, at a time when political changes in our country might take place and which we will have nothing to say about, or nothing to do about. When I write in there, as I have done, that the organization, training, discipline and regulation of the federally recognized National Guard shall be in conformity to the federal prescription, I mean all tests, measures of efficiency for appointment of those officers, or their continuance in the service and their removal by military regulation and law. I think it is most important that that statement be included in there.

Now, I don't want to get into too long a dissertation on this. But Colonel, recall the unfortunate fate of the National Guard of the 29th Division in 1917, and of the 44th Division, when we sent into the struggle some officers who weren't qualified. The consequences were that those officers were instantly relieved. Leaders were sent to us from various states and it destroyed the integrity of the New Jersey organization. That sort of thing is destructive of the morale and of the interest of the younger men of the officer corps who are seeking promotion. That should be eliminated, and I think that if we would adopt, in principle, conformity with the federal regulations on that, we will obviate that circumstance in the future.

MR. WALTON: Just one more question along that line, because this was the thought that was in the Committee's mind when that question came up. We discussed that. Certainly I am not against federal recognition, because I happen to be recognized in my rank. The Committee thought of a "disaster corps" such as you spoke of a few minutes ago. The Committee didn't want to tie the hands of the future generations for setting up something that might be along the lines of a military character, such as they are setting up in New York State at the present time as a "disaster corps." It was felt that it might be a mistake to tie it down to specific federal requirements. It seemed preferable to leave it up to the Legislature, which we did in that wording, "according to law."

MR. McKINLEY: Well, when we are talking about civilian defense, Colonel, all I can repeat is my view on that. It is this: In the last war the civilian defense corps was set up, more or less, by executive order of the President of the United States under more or less wartime powers. The Federal Government came into our State and told us what we could do and what we couldn't do, and how we could do it, and all that. Now, I know whereof I speak, because I

organized the aircraft service of this State and we were very close to them during all of that time.

I am concerned with just one, perhaps a seemingly flimsy thing, and that is, that if we just mention it in our Constitution, we have reserved to the State of New Jersey the right to have something to say on how our citizenry shall be used in time of war. I predicate it, as I say again, on the reservation of that right under the Tenth Amendment of the Federal Constitution.

MR. WALTON: One more thing I would like to mention, and that is concerning removal. I think both you and the previous speaker spoke about the power of the Governor to remove. Maybe I am wrong, but it was not my understanding that under this military section the Governor could willy-nilly remove an officer. The first paragraph provides that the Legislature may set up and organize. We presume that the Legislature would set up court-martials, efficiency boards, and that sort of thing under that clause. The sentence to which you referred in the Schedule refers to the time when the Constitution goes into effect. General Powell thought it might be a good idea to get things set up in the proper way. But there is no gubernatorial power of removal in here, except as to the staff. I think you agree with that section.

MR. McKINLEY: Yes. I attempted to read this thing, and I have studied it and discussed it with other officers. I can recite to you an old military axiom, particularly in the instructions we had on how to write an order, and that is, that what can be misunderstood will be misunderstood. So we had better tie it down so that there won't be any misunderstandings.

MR. WALTON: There was some clause added in here which provided that officers can be removed only by action of a court-martial or an efficiency board, as may be provided by law, whichever was satisfactory.

MR. McKINLEY: Either that, or take the language I used in there: "the organization, training, discipline and regulation." If you accept that as a principle, you have accepted all of that. You are familiar with National Guard regulations, and you know that it goes through the whole rigmarole and category. If you accept that as a principle, you have accepted the whole business.

CHAIRMAN: Commissioner Smith.

MR. J. SPENCER SMITH: Mr. McKinley, supplementing what Colonel Walton had to say, I know that when we were drafting this very clause we had in mind practically everything you stated here that you wanted. We felt, on delving into it, that we wanted to talk to people who had some acquaintance with the War Department, and that we were doing just the thing that you wished. Now the thought that runs through my mind is this: If the things you have

in mind come to pass, and I think we all ought to be aware that they might, as you state it—

MR. McKINLEY: Well, they have happened.

MR. SMITH: Yes, that's right. It would be safer to leave that matter in the hands of the Legislature, as we tried to do here, by law, to prevent any Governor from acting as you suggested he might. I think that if it ever comes to that condition you refer to, we all had better look out, because the Constitution or anything else won't protect us. But it did seem to us, as Colonel Walton said, too, that it would give the militia, that is, the military, which you are interested in, much wider latitude by using the phraseology we have than we could do otherwise. It would accomplish that by making it a matter of law, and those who are interested would have the opportunity to appear before the Legislature when it drafted the kind of a law or laws that govern military organizations. I take it for granted that you have thought that, too.

MR. McKINLEY: Well, all I can reply to you is that my chief concern for having a sufficient specification in the Constitution is to indicate to the Legislature what kind of a law you want. As I said before, what can be misunderstood will be misunderstood.

MR. SMITH: We had that in mind, too, and that is why we were very brief in what we put down, so that there could be no misunderstanding that it was within the power of the Legislature.

MRS. BARUS: The other military experts who came before this Committee assured us that it was necessary to put in the proviso that "the training, organization, etc.," of the National Guard of New Jersey should conform to federal standards. They said that was absolutely necessary, because otherwise no federal funds would be given, although it was just superredundant to put it in—that it was just a redundant phrase. Would you agree to that?

MR. McKINLEY: Not exactly, no. You say "the organizing, inducting and arming" of the National Guard in the first sentence. Now, the "organization, training, discipline and regulation" will dictate their armament and organization, and what have you. I think that it is rather essential that that standard be included in the Constitution, for this reason: The common defense of the country as a whole now envisions that state troops shall be raised according to a broad national defense plan. In other words, the determination of how many infantry divisions to have, how many anti-aircraft batteries to have, and how many this, and how many that, has been worked out by the War Department and apportioned to the states in proper balance, so that if and when it is essential to call up the National Guard in the common defense under the draft provisions of the Federal Constitution, it can bring an organized force that has been properly integrated. Now, if we leave that to chance,

it might evolve that our State here would like to organize nothing but infantry, nothing but cavalry, or nothing but something else. I think that the acknowledgment of the integration of our forces with the federal service would be a wise thing to continue in the Constitution. However, it is a moot question, and like the lawyers, the officers don't agree.

CHAIRMAN: Is there any other member of the Committee who would like to comment?

(Silence)

CHAIRMAN: Mr. McKinley, I would just like to say this: So far as I could ascertain, there was hardly a word that you said in your statement that I didn't fully agree with. In other words, I think that our objectives are 100 per cent the same. The only difference that I see is in our method of accomplishing that result.

Now, the only point that I would like to make to what you have been saying is that in making the language as simple as we did, we felt that the less we froze certain fixed statements into the Constitution, the more able would the Legislature be to pass legislation that would keep up with current times and current problems. It would be able to make and keep the militia and/or the National Guard a more effective force than tying it down to any one method or approach. Maybe we have erred somewhat in simplicity, but I can assure you that the objective is the same.

MR. McKINLEY: Well, Mr. Chairman, I want to say that the American Legion does not appear before this Committee in any sense in the attitude of a critic or a fault-finder, or anything of that kind. We are military, and we do have a military background, and perhaps our concern for precise statement may be sharpened by our experience. We are making what we think to be a contribution which we hope will help you complete your task. I agree with you that the Constitution is merely a blueprint. It is not the structure or body of the law. It is merely the framework on which you hope to build, and the carpenters and the plumbers, and what have you, are the legislators who put the building up according to the plans. I agree with you that we should stick, so far as possible, to a simple statement. But sometimes the statement can be so simple that, as I pointed out, you can misunderstand it.

CHAIRMAN: Thank you very much, Mr. McKinley.

Would you introduce the next member of your group, please?

MR. McKINLEY: I think the next gentleman who desires to speak is Mr. Gabriel Kurtzenbaum, of the Jewish War Veterans, Department of New Jersey.

CHAIRMAN: Mr. Kurtzenbaum, will you please take the chair?

Mr. Kurtzenbaum is Vice-Commander of the Jewish War Veterans' Association of New Jersey.

MR. GABRIEL KURTZENBAUM: Mr. Chairman and members of the Committee:

I am appearing for the State Commander, Harry Stanley, of Trenton. The Jewish War Veterans would like to see certain safeguards written into the Constitution with regard to the militia.

Now, in peacetime the militia serves in an emergency or insurrection or rebellion, and in wartime it usually is and has become federalized. Therefore, we feel that appointment of officers should be made on the basis of merit.

Our main objective, which we want to bring to the Committee, is that we would like the militia taken out of politics. I will be perfectly blunt; that is the main objective. Under the present set-up it is not. Appointments can be made on any basis whatsoever.

We say take it out of politics. You members of the Committee may say, "Well, it is not on the constitutional level. It should be on the legislative level." I disagree with anyone who would say that, because if we leave it to the Legislature, the militia will be in politics.

I refer you to the old appointments of the State Guard, the National Guard. Many of those appointments were looked on with disfavor by reason of the fact that they were political. We would like to have that removed. We would like to have the possibility of that taken away. We don't want it to happen in the future.

The present State Guard is having considerable difficulty in getting enlistments because of the political factor, and we say that if your Committee would put the militia on a basis above politics we would not have that trouble.

Now, as far as qualifications are concerned, there is nothing in the Constitution. On page 10, Section III states they are to be appointed and commissioned by the Governor according to law. Paragraph 3 certainly doesn't restrict the Governor at all, because the staff officers would serve at his pleasure. He can remove them at his pleasure.

Under paragraph 2, Section III, on page 10, nothing is mentioned with regard to removal. You are leaving it to the Legislature, and we would like to see it in the Constitution itself. We would like to see the men who are holding commissions protected by tenure. We base this all on the one premise that we would like to see the State Guard or the National Guard, whichever you term it, removed from politics.

CHAIRMAN: Would any member of the Committee like to ask Mr. Kurtzenbaum any questions?

(Silence)

CHAIRMAN: Thank you very much, sir.

Mr. McKinley, would you introduce the next member of your group?

MR. McKINLEY: Yes sir . . . Merely by way of introduction, Mr. Chairman, I would like to present Dr. Samuel Loveman, Department Commander of the American Legion.

Now, the next speaker will be Mr. Ben Thomas, Department Adjutant of the Veterans of Foreign Wars of the United States, Department of New Jersey.

MR. BEN THOMAS: Mr. Chairman and members of the Committee:

I am not the one who was supposed to speak for the Veterans of Foreign Wars today. Our Judge Advocate was supposed to speak and present a brief.

However, I have sat here and listened with a great deal of interest to the discussions relative to this question. I have been particularly interested in the intent and purpose of the Committee, which placed or is attempting to place these proposed revisions in the Constitution. The Committee, as I understand it, didn't have any intention of doing anything counter except what was placed before you today by the previous speakers. I am not going to elaborate on what they said because they have expressed it very finely and they expressed my opinion and that of my organization.

Apparently we seem to be in agreement, but evidently somewhere there is something wrong, or we wouldn't be here. It is the feeling of those who know, or who are supposed to know, and who have studied this question, that the intention of the Committee as expressed here today by your Chairman is not clearly emphasized in the proposed section of the new Constitution. That is the reason why these objections, or rather these interjections, are being presented by these organizations.

Now, it seems to me that there is in that proposed new Constitution a section which gives the Governor authority to remove officers at his pleasure. May I ask the Committee a question? To what officers does that section apply?

CHAIRMAN: Colonel Walton, will you answer that question, please?

MR. WALTON: Mr. Thomas, I am not familiar with that section.

MR. THOMAS: I believe it is caption No. 3.

MR. WALTON: Oh, I see. No. 3 has to do with the staff and allows the Governor to appoint and remove his own staff at his pleasure.

MR. THOMAS: Would you please elucidate and tell me who those staff officers are?

MR. WALTON: The Governor has the power to set up his own

staff, by executive order. I presume the executive order would set forth who were the members of that staff. Probably it would be a Chief-of-Staff, and included therein would be the Adjutant-General and the Quartermaster-General. At the present time, I believe, General Powell has been appointed by Governor Driscoll under a recent act of the Legislature which allows the Governor to appoint his own Chief-of-Staff. He is engaged in setting up such a staff, and it will, of course, include General Powell himself as Chief-of-Staff, and then G-1, 2, 3 and 4. G-4 is also the Quartermaster-General, and, I think, G-1 is the Adjutant-General.

CHAIRMAN: I am wondering if there isn't a little confusion in thought here, that the power of the Governor to remove an officer from the staff doesn't mean that he has the power to remove him from his office, which is quite different. In other words, if the Quartermaster-General was appointed as a member of the staff, and the Governor decided he didn't want him on the staff, he could remove him from his staff, but that doesn't mean that he couldn't continue to function as a Quartermaster-General.

MR. THOMAS: That isn't what it says in the book. That is where all the trouble is coming in. It says he may remove at his pleasure. It doesn't say from the staff.

CHAIRMAN: That's right, Mr. Thomas.

MR. THOMAS: It doesn't say "from the staff." Now that, Mr. Chairman, is the crux of the whole situation. I think Colonel Walton and I discussed this before. That is the crux of the entire situation, and that is what we are objecting to.

CHAIRMAN: Well, suppose I read it (*reading*):

"The Governor may, by executive order, establish, alter or abolish, and from time to time organize and appoint a staff, to serve at his pleasure. . ."

Then it goes on and says:

" . . . and define its functions, powers and duties, to aid him in the administration of military and naval affairs."

Now, Colonel Walton, is there a disagreement between you and me as to what that paragraph means?

MR. WALTON: Yes, there evidently is, Mr. Chairman, and there is a disagreement between us as to whether or not that should be included.

MR. THOMAS: I am not responsible for any disagreements.

CHAIRMAN: No, we are just trying to define what is in there.

MR. THOMAS: I think definitely it is the thought of the men who have gone into this thing rather carefully that it is the intention of the present section to enable the Governor to remove those men from office, and that is what we object to. As I said before, Colonel Walton and I have talked this thing over before I came up here, and it definitely seemed to be his opinion that the Governor

should have that authority, and since he was a member of this Committee I had no other recourse than to think that it was the intention and purpose of the Committee to give that authority to the Governor.

The Veterans of Foreign Wars are of the opinion that when a man is doing a good job he should be allowed to continue on that job. If there is any reason why he should be removed, we believe that there is a system and a means to remove him. The mere fact that a Governor may lack confidence in a man is probably not sufficient cause to remove him from office, unless that lack of confidence can be supported in a court-martial.

Now, let us not kid ourselves about this thing. There is, in our opinion, definitely an attempt to place within the reach of the Governor the removal of men who are already serving and who have served well over a period of years. I don't say that the present Governor would make use of that power. I don't know that any Governor might make use of it, but in our opinion it is a dangerous weapon to put in the hands of any man.

The concept of American life and economic security is all based on the fact that a man shall keep his job as long as he can perform its requirements and as long as he is satisfactory to those for whom he works. A man should not be removed from his job just because a new boss comes in and doesn't happen to like him, unless that boss can prove that the man is a detriment to the business for which he works. Bringing it right down to the home grounds, it's the bread and butter of the men who are working there today, and it is our opinion that they should not be subjected to any political pressure for any political advancement on the part of the Governor. We believe that officers who are fit, willing and able to work should be retained in their offices and removed only by process of court-martial. That is a fair proposition, and any military man knows it is a fair proposition, and that is the way it should be.

As far as the appointments are concerned, there is no question in any of our minds that the appointments should be made from men who are fit and who are capable—men who will conform to federal regulations and standards. As Colonel McKinley has said, we had the spectacle in World War I and World War II of state officers who were unfit to lead the troops; who had to be removed from their positions when they went into federal service. I think we all know that, and I don't think we want to see it happen again.

I want to tell you, gentlemen, that today the National Guard is having a tremendous job recruiting and making enlistments. There are many reasons for that. One of the reasons is that these men coming in, who have served in the wars of this country and who are veterans, and boys from civilian life who were never veterans, who

want to go into our armed forces, into our National Guard, can see no advancement. They can see no reason why they should put their time in and their energy into an organization where advancement is going to depend upon political pressure.

There is no use kidding ourselves. That is exactly what is going to happen unless we write some safeguards into this Constitution. It's all right to say that this thing should be left at the level of the Legislature, but the Legislature is amenable to pressure from the top, whereas if it is in the Constitution nobody can change it. I say in all fairness to the men who are going to make our National Guard, they should be allowed to go into that Guard and get their advancement in accordance with their ability and energy and willingness to go ahead, rather than upon the favor of some person who might hold political office.

We certainly want to write into the record what we want to see: protection for the men who are in our services. We want that protection, not in the hands of the Governor, but in the hands of a court-martial board, where charges can be made publicly, where a man can have his day in court, and he can have his say in the matter without being railroaded out.

I think that about sums up what I want to say.

CHAIRMAN: Thank you very much, Mr. Thomas.

Would any member of the Committee want to ask Mr. Thomas a question? . . . Colonel Walton.

MR. WALTON: Mr. Thomas, you don't hold the theory that a commander should be entitled to pick the members of his own staff, I take it?

MR. THOMAS: You might elucidate a little on that point, Colonel Walton.

MR. WALTON: Well, you just don't believe that the Commander-in-Chief of the State Militia should have the privilege of picking the members of his own staff, I take it?

MR. THOMAS: You have included "members of his own staff," as I got it from the question. You have included two men who are now constitutional officers, the Quartermaster-General and the Adjutant-General. Ordinarily, a Governor's staff is composed of men who walk around wearing all their gold braid hanging on their shoulders. Colonel Walton, I am not talking about the Governor's aides; I am talking about the members of the state staff. Ordinarily that is what they are.

MR. WALTON: There is a distinction there, isn't there?

MR. THOMAS: Well, it's not too much of a distinction. The point I am trying to make here is that I don't believe that the Governor, or anyone else, has the right to remove a man from office who

is presently holding office, just because he wants to put somebody else in there.

MR. WALTON: Well, Mr. Thomas, as I mentioned a little while ago, the present Governor has appointed a Chief-of-Staff under this act that was passed by the recent session of the Legislature. Do you feel that the succeeding Governor should automatically continue that particular officer as Chief-of-Staff?

MR. THOMAS: If that Chief-of-Staff is capable and is able to do his job I see no reason why he should be removed. That is where you and I differ fundamentally, and I am afraid that was the intention of the Committee, and that is why we are so heated up over this.

CHAIRMAN: I certainly don't want to prolong the argument, but we certainly would have lost an awful lot of wars with your policy, if your policy had been carried out.

MR. THOMAS: I doubt that.

CHAIRMAN: Oh, yes. A fundamental thing about the Federal Government is that the President of the United States can remove the Chief-of-Staff and put in another one.

MR. THOMAS: If the Chief-of-Staff had been incompetent we would have lost the war, and if he was incompetent he could have been removed by court-martial.

CHAIRMAN: I know, but the point is that you don't know that until you have the court-martial. But I am just talking about the federal system.

MR. THOMAS: Any officer can be suspended for cause. You don't have to wait for court-martial proceedings. He can be suspended for cause at any time and removed from the scene of operations. We wouldn't have lost any wars.

CHAIRMAN: Well, as I understand it, all that the Committee was trying to do was to model this after the federal system, so that the Commander-in-Chief would be the Commander-in-Chief, and not just a rubber stamp at the head of a nation.

Are there any further questions at this point?

MR. SMITH: Would you prefer a man to be relieved because the Governor, or the Commander-in-Chief, thought that the man wasn't doing the job that he thought could be done? Or would you prefer to have that man be court-martialed?

MR. THOMAS: The matter of relieving a man of his office presupposes that a court-martial is in the offing. He is not relieved unless he is relieved for cause.

MR. SMITH: Well, that is a matter of opinion.

MR. THOMAS: It isn't a matter of opinion. It's a matter of law.

MR. SMITH: All right. You have the privilege of thinking as you please. I am merely asking a question. Maybe you would rather

have a man court-martialed than have the right of a superior officer to relieve him. There wouldn't be any odium—

MR. THOMAS: A superior officer cannot relieve an officer unless it's for cause, and when such is done, it must be shown in a court-martial proceeding.

CHAIRMAN: Any other questions?

(Silence)

CHAIRMAN: Thank you very much, Mr. Thomas, for appearing before us.

MR. THOMAS: Thank you for your kindness.

MR. McKINLEY: Mr. Chairman and members of the Committee, on behalf of the veterans' groups, I am very grateful to you for the courtesies extended to this group.

CHAIRMAN: Thank you very much, Mr. McKinley, and on behalf of the Committee I want to thank you and your group very much for coming here and giving us the benefit of your opinions.

I would like to announce that the meeting is adjourned until 2:15 P. M.

(The session adjourned at 1:15 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, July 29, 1947

(Afternoon session)

(The session began at 2:15 P. M.)

PRESENT: Barus, Eggers, Feller, Miller, S., Jr., Smith, J. S., Van Alstyne, Walton and Young.

Chairman David Van Alstyne, Jr., presided.

CHAIRMAN DAVID VAN ALSTYNE, JR.: The meeting will come to order. Will the members of the Executive Committee please move forward and take their seats? The first person we would like to hear is Dr. Thomas H. Reed, who is in a hurry to get away, and I'm going to ask Mr. Miller to introduce him. Mr. Miller.

MR. SPENCER MILLER, JR.: Mr. Chairman and members of the Committee:

The New Jersey Committee on Constitutional Revision which, as you recall, is composed of 12 constituent state-wide organizations, has sought from the first to facilitate the work of the several Committees of this Convention. In connection with the preparation of the final draft of the work of this Committee and the Legislative Committee, the Committee on Constitutional Revision has invited Dr. Thomas H. Reed, one of the outstanding students of government in this country, to come here to serve as an expert witness in connection with the drafting of this report.

May I say that Dr. Reed has had a unique and varied experience both in the theory and in the practice of government. He began as the secretary to Hiram Johnson, the Governor of California, and became, shortly thereafter, a member of the faculty of the University of California, where he served for some dozen years and made a distinguished record for himself in the Department of Political Science. It was during that time that he was conducting courses at the university in the field of state legislation. He was called from the post of Professor of Political Science of the University of California to the post of the Department of Government at the University of Michigan, where for another period of about a dozen years he served with distinction as a member of that great university of the Middle West. Thereafter, Dr. Reed worked on a series of books, textbooks particularly, in the field of municipal government

and municipal administration. In 1943 Dr. Reed came to Connecticut where he became the advisor and consultant to the committee that was set up in that state on public expenditures, serving as its consultant for a period of some five years. Dr. Reed today is, in addition, a consultant on government to the National Municipal League. He has been called upon by officials of state governments and municipal governments throughout this country, preparing municipal charters, advising on governmental problems, and in general serving as one of the foremost consultants in the field of government.

Today I am merely acting in the capacity of a representative of the Committee on Constitutional Revision. I have very great pleasure in presenting, on behalf of the Committee, to this Committee on the Executive, Dr. Thomas H. Reed.

CHAIRMAN: Dr. Reed, in the name of the Committee, we welcome you and thank you for appearing.

MR. THOMAS H. REED: I was here yesterday and talked before the Legislative Committee and I'm beginning to get a little used to this microphone. I think that I can best begin, perhaps, by echoing some of things which were said this morning—not at any great length, but simply to add my word to what has already been said. On the whole, the tentative draft which you have submitted is a very excellent piece of work and a very great improvement on the provisions in the present New Jersey Constitution.

I think everyone who has been at all familiar with New Jersey affairs realizes that one of the great weaknesses of the New Jersey Government has been the fact that the Governor was not clearly and definitely responsible for the conduct of the administration. He had wide appointive powers of a sort, but when it came down to the direct control and supervision of the administration itself, his powers have been inadequate to accompany the kind of responsibility which should be his. The clearest and best way of securing democratic government under popular control is to concentrate power and responsibility in such forms that the people can lay their hands on whomever is responsible for the conduct of the government and can make such changes or offer such rewards for his conduct as seem to them best. That is almost the only way. The idea that you can have a democratic government by splitting it up into fragments, so that many individuals are responsible for small parts of it to the people as a whole, is entirely false and illusory. It is not democratic. It is the reverse, because under the conditions of modern life the people cannot follow the course of multiple agencies and multiple officers who perform functions which of themselves are not of the greatest importance. They find it difficult to find their way through the intricacies of a complex, disintegrated form of administration, and that is the kind of administration that

has characterized New Jersey and, it may also be said, most of the other states in the Union.

Here, you have taken a very long step forward in bringing the position of the Governor into focus, so that the public, who naturally hold him responsible for the conduct of government, will be able really to do so, because he will be responsible for the Executive Branch of the government. You have lengthened his term. You have made him capable of succeeding himself. I want to say that, in my opinion, the ability of the Governor to succeed himself is essential to genuine popular control. Unless the people are able to reward as well as punish a Governor, they are not in a position to control a Governor. A Governor who has only one term and cannot succeed himself is put in a position of *quasi*-independence, it is true—removed, perhaps, from some temptations which political leaders may otherwise be in. But on the other hand, he is also removed from the possibility of reward or punishment, and that is a deprivation of the power that should belong to the people to reward their officials.

I think it is very clear that re-eligibility is a desirable thing. You have limited that re-eligibility to two terms. I think that is probably the only practical thing that can be done under the circumstances, although there is some logical question as to whether, if you are going to have re-eligibility, it should not be indefinite re-eligibility. As a practical matter, you are taking a step forward in making him re-eligible for another term. Of course, making the term four years is a very practical step. The three-year period that you have, has had the effect of shifting the relationship of your election to national elections in such a way as to create disturbance in politics, rather than uniformity of practice. You will now be able to have your state elections in odd-numbered years, when there is no national election, and I think that will be a very great gain. I think that it is highly desirable that the Governor should be able to succeed himself.

Now, I notice in Section I, subsection 12—

CHAIRMAN: May we have the page, please?

MR. REED: That is on page 8. A matter that, perhaps, has escaped your attention. It says (*reading*):

"The Governor may not thereafter fill the same office or position by *ad interim* appointment unless he shall have made a nomination to the Senate during the regular session and the Senate shall have adjourned without either confirming or rejecting the nomination so made."

Now apparently, if the Senate has rejected the Governor's nomination, he is not in the position to fill the appointment by another *ad interim* appointment, and the result would be that no appointment could be made except by calling the Senate together in special session in order to make that appointment. I don't know whether

that is what you meant to do. But in discussing it with some interested persons last night, I made up my mind that I would at least raise that question, because it may be that it is simply a matter of inadvertence that the case in which the Senate rejects an appointment makes it impossible for the Governor to make another appointment, even of another person. Of course, he would have to withhold making the appointment of another person in any event until he has summoned the Senate in extra session, because he is forbidden to make an *ad interim* appointment.

CHAIRMAN: Would you like to have us speak on that point? Let's speak on these points as you bring them up.

MR. REED: All right.

CHAIRMAN: Does any member of the Committee wish to express himself as to what we really meant there?

MRS. JANE E. BARUS: The idea was to prevent a series of *ad interim* appointments that would really be an abuse of the gubernatorial power. It is possible that it could be done by failing to send in a regular, so to speak, appointment, while the Legislature was in session. He could continue with that series of appointments. But I think I understand the point you are making, Dr. Reed.

MR. REED: Yes, you should cover, it seems to me, the case of where the Senate rejects it, as well as where the Senate fails to act or to reject. You have covered the case where it fails to act, but the same result is brought about by the Senate's rejecting an appointment that he has made. You can't very well get along without having somebody in the office, and another *ad interim* appointment should be made unless you intend to force him to call the Senate in extra session in order to make it.

MRS. BARUS: I don't think that was the intent. I think it was loose wording, so far as I know.

CHAIRMAN: Well, I think I would like to ask if the draftsman has any point of view on that. Mr. Miller, would you like to speak on this point?

MR. WILLIAM MILLER: Mr. Chairman, I think that Dr. Reed is thoroughly correct in that it would be necessary to call the Senate in special session. It was my understanding that that was what the Committee wished. If a different intention were present, we would have had to change the language.

CHAIRMAN: Any member of the Committee may correct me. . . . My understanding of it was along the lines of what Mr. Miller said, only a little more so. The thinking was that if the Senate failed to act on any name that the Governor might send in, the Senate might then be considered in altercation with the Governor, in which case it was felt absolutely correct that for that office vacancy to be filled the Governor should send in another name and should

call the Senate back in a special session to act on that name. Does any member of the Committee disagree with that thinking?

(No response)

CHAIRMAN: Then I think that is that. The wording is what we intended.

MR. REED: I'm glad to have my impression corrected. If that is the intention of the Committee, then it is perfectly all right. I think, perhaps, that you should modify your language so that it becomes entirely clear that that is what you meant, because it is necessary to dig a bit in order to extract the meaning of this particular clause.

The following clause, 13, provides for overcoming the veto of the Governor by a two-thirds vote after allowing him ten days in which to consider the bill during the session. I think that that is a wise step. It always seemed to me that a gubernatorial veto that could be passed over by a mere majority was something bordering on the ridiculous. It is not a very effective instrument because it doesn't give the Executive any real share in the legislative process. We have that same provision in Connecticut at the present time, and the Connecticut legislature has recently adopted a constitutional amendment, which has not as yet been submitted to the people, which will provide for a two-thirds vote necessary to override the Governor's veto. The Connecticut constitutional provision, however, differs from yours in handling the matter of the consideration of bills after the close of the session. Under the Connecticut provision, the Governor has 30 days in which to act on bills that reach him during the last five days of the session. They become law if he does not sign them. He has to veto a bill in order to defeat it. This new Connecticut proposal provides that the Legislature shall assemble in special session after the 30-day period is over, for the purpose of passing on the Governor's veto. The idea was to do away with the pocket veto, which you very distinctly provide for in your amendment. You allow him 45 days, but the bill does not become a law unless he signs it, and there is no recourse on the part of the Legislature if the Governor vetoes their legislation.

CHAIRMAN: May I speak on that, Dr. Reed?

MR. REED: Yes.

CHAIRMAN: We discussed that matter in Committee at considerable length, and we felt that that problem could best be taken care of in the Legislative Article, whereby the Legislature would set up machinery by which they could call themselves back into session. That was done. Provision to that effect is in the Legislative Section.

MR. REED: There is no such provision in the Legislative Section now.

CHAIRMAN: There is not?

MR. REED: No.

MRS. BARUS: Yes, there is. You go ahead.

(Mrs. Barus proceeded to look for the provision in question)

MR. REED: The next point that I have to raise is referred to in subsection 14, with a word of praise in that you have added to the Governor's item veto the privilege of reducing appropriations as well as striking them out entirely. That, I think, makes it very much more effective, because it is very frequently a reduction rather than a complete destruction of the item that is desirable.

Then I skip, in my consideration, over to Section IV, which deals with the departmental organization. You provide that the Legislature must allocate all the various departments and instrumentalities of the State Government into not more than 20 departments. Of course, that figure 20 is arbitrary. It is one more than the number allowed in the State of New York. They have 19 departments. Some people seem to think that is too many. I think, myself, that there is no need for 20 actually first-rate departments. I think that probably eight or nine would be enough, if you were merely concentrating the ordinary administrative powers of the State into a number of principal departments.

But there are some other things that you have to do. You have a lot of boards and commissions and agencies of one kind and another that have to be brought together in departments under this phraseology, and 20 may not be any too many. You have, for example, a Public Utilities Commission, which is an instrumentality of the State Government, and while the courts hold that its powers are legislative in character, it is undoubtedly an executive body. Under this form of constitutional provision you are adopting, which does not permit the naming of any department, it probably has to be listed as a department, and you would have to find a place for it in this kind of scheme. There are a great many instances of that kind of department which you would have to include in your list of departments or instrumentalities. You would have to include those which are not really executive departments in the most serious sense of that word. So I don't think there is anything wrong in your number. I think 20 will do just as well as any other. But I don't believe that when you actually come to organizing your administration you will have 20 major departments of government. You will have probably eight or nine major departments, and then some other departments in which you group a variety of services for the purpose of conforming with this amendment, the purpose of which I very heartily approve. I think it is highly necessary to do something to reduce the number of agencies with which the Governor has to deal directly, if his power of dealing with them is to be effective.

CHAIRMAN: Dr. Reed, if you will allow me. You have raised

a very interesting point. The Committee has received a letter from Dean Sommer which specifically brings up for discussion this matter of exactly where the Public Utilities Commission fits in the picture. I would like to have our technician, Mr. Miller, speak on that point. I know that the matter was faced very squarely by the State of New York, and he has made a study of it. Mr. Miller, will you please come to the microphone?

MR. WILLIAM MILLER: Mr. Chairman, with reference to the Public Utilities Commission, and perhaps other bodies such as the Alcoholic Beverage Control Department and other regulatory agencies, as they are sometimes described, we have to recognize that language such as you have here is the barest general statement of principle, which is all you can get into a Constitution. There will be agencies of that kind that won't fit because they are not conventional administrative departments that would be directly under the Governor. In order to fit them in they could have two possible positions: one, as Dr. Reed has suggested, is in itself a principal department; the other is a division within a principal department.

I think we have to think of these principal departments more as Cabinet divisions, analogous to the Federal Government, and under individual Cabinet heads perhaps have a number of operations which are *quasi*-independent. Certainly the Public Utilities Commission would be one such department which, in this scheme of things, might conceivably be under the Executive Department or, perhaps, a broader title. The Public Utilities Commission could be under a department which includes not only the conventional public utilities, and the regulation of public utilities, but the regulation of other types of business where there is a similar function.

The point is that the Legislature would be free, in my opinion, under the language as drawn, to adopt that form of organization which best suits the particular type of department, rather than be restricted to any given type of organization. What we have done really is to state a minimum number of general principles. There are other principles which are not stated, which would be within the legislative competence. The details, of course, would follow at the discretion of the Legislature.

CHAIRMAN: Thank you, Mr. Miller.

MR. REED: I am seeking an explanation of the section which would resolve the doubts of some people who are in opposition to it. I don't think that there is any serious objection to resolving all your agencies of government into 20 groups, and I was merely calling attention to the fact than an instrumentality such as the Public Utilities Commission can be taken care of under such arrangement without at all interfering with the exercise of its powers. Of course, there is a certain element of artificiality, naturally, in some of the

departmental organizations which you will set up under this section, but on the whole I think it is the very best thing you could have done and a very great improvement over what you now have.

MR. SPENCER MILLER, JR.: Mr. Chairman, may I ask Dr. Reed a question?

CHAIRMAN: Commissioner Miller.

MR. SPENCER MILLER, JR.: We have been reminded again and again, Dr. Reed, in the course of our considerations of this matter, that we want to produce a document which is not only simple in its broad outlines but a document which can be understood by the layman. One of the difficulties of putting in the phrase "twenty principal departments" is the creating of an impression on the part of certain sections of the public that we are, in fact, creating more and not fewer departments of government. I mention that because only this morning I had an irate neighbor call me up and ask why it was that in the Executive Article we were providing for 20 different departments, and I reminded him that if we succeeded in organizing the Executive Branch of government into 20 principal departments we would be achieving not a miracle, but something less than a miracle with a State that has between 90 and 100 different departments and divisions. That information, of course, was not known to him. I am wondering whether, in your studies of the Constitution, you could suggest any language that might be a substitute for naming 20 as a number and which, at the same time, would be a definite command, if you will, or direction to the Legislature that you wanted fundamental reorganization in the administrative branch of the State Government to achieve the fact you have pointed out, namely, that there are perhaps nine or ten chief functions of State Government that ought to be or could be set forth in rather specific categories.

MR. REED: There are, at the most, probably nine or ten departments which would embrace 90 per cent of all the activities of the State, measured by the number of personnel and by expenditures. The remaining departments are numerous, but not in themselves too individually significant, and that is where the difficulty comes in.

I don't know, however, Mr. Miller, any other things to do than what you have done. You want to force the Legislature to reduce the number of departments and, on the other hand, you are firmly resolved not to name the departments you want reduced, and that creates a kind of dilemma which makes this kind of language almost the only kind you can use. I recognize the desirability of not mentioning particular departments, because when they are mentioned it freezes them into the Constitution and makes the thing inflexible.

On the other hand, there is difficulty in trying to express clearly the idea which you have in mind without specifications.

I think that you have done about as well as you could, and will simply have to rely on explaining the thing to the public to the best of your ability. You have to issue a command to the Legislature to reduce the number of departments. If you tell them to reduce the number of departments, they might reduce them from 93 to 89, or something like that. They might not do anything about it at all, as I am going to mention in a moment, and the result would not be very satisfactory. You have issued them a mandate that they have to get the number down to something like a reasonable number, and I know of no other way of approaching it, unless you were to specify the departments into which you wanted the State Government organized.

MR. SPENCER MILLER, JR.: As between the two, you would prefer to say not more than 20 departments rather than freeze the thing?

MR. REED: Yes, I think it is very much safer.

Next, I want to call attention to subsection 2—the language that “Each principal department shall be under the supervision and control of the Governor.” There is some objection, in my mind, to the use of the word “and control,” because that would seem to imply that the Governor could issue orders to all of these departments. There are some of them, like the Public Utilities Commission, as referred to previously, where very definitely the Governor should not issue orders as to what they should decide with regard to the functions entrusted to them.

I think that if you left it at “supervision” you would still have, of course, the fact that the Governor appoints the heads of these departments and may remove them at pleasure, which would give sufficient authority to the Governor in dealing with the situation. The words “and control” do create a certain amount of question as to the extent of authority that the Governor is going to exercise, and there are certain departments to which they are distinctly not applicable. It seems to me the best thing would be to just drop out the words “and control.”

MR. WILLIAM MILLER: Mr. Chairman, I wonder if we might not again note the fact that this very phrase “and control” was a part of the concern which Dean Sommer had expressed in his letter to you. I think it was that fact.

CHAIRMAN: That’s right, Mr. Miller.

MR. WILLIAM MILLER: I am wondering whether Dr. Reed hasn’t given us a helpful suggestion there—that we could probably achieve all that we desire with the word “supervision” and that, by deleting the words “and control,” we remove the possibility of any

apprehension that Dean Sommer and the Public Utilities Commission might have.

CHAIRMAN: Thank you. I am sure we will take it up in committee meeting.

MR. REED: Another question that has been raised, as I happen to know and which has occurred to me, is where you say that there shall be a single head of each of those executive departments, except as provided by law. Now that, of course, leaves the Legislature free to create boards as the heads of departments to any extent that they want. Again, I don't know how you could limit it any more than you do, unless you were going to specify those departments in which boards or commissions were to be allowed. That is another very serious question which arises, because of the fact that you don't want to specify them. I, personally, would be quite satisfied with the way you have it. I think you should leave it to the Legislature under the general pattern of constitutional provision which you have decided on. I don't see how you could possibly avoid doing it that way.

CHAIRMAN: Would you submit to a question, Dr. Reed?

MR. REED: Yes. Certainly.

CHAIRMAN: Judge Feller.

MR. MILTON A. FELLER: Doctor, do you think that the function of consolidating and reallocating these different departments is a legislative or an executive function?

MR. REED: It may be either, and you, apparently, have decided in favor of the executive function. The Constitutional Revision Committee recommended the idea of its being done by the Governor.

MR. FELLER: Pardon me, Doctor, we have decided it was a legislative function.

MR. REED: A legislative function? Yes, that's what I meant to say . . . I think that it can be either. I don't think that it makes a great deal of difference, except this, which is the point I was coming to—that there is no way of compelling a Legislature to act. You have said in your Schedule that the Legislature shall make this allocation before July 1, 1949, but if the Legislature doesn't make that allocation by July 1, 1949, there is no provision whatever for picking it up and there is no way in which you can command the Legislature. It is not subject to review by the courts. The Legislature is a law unto itself and it can leave the constitutional mandate unfulfilled, and legislatures have been known to do that.

There will, obviously, be a great deal of pressure exerted to retain the *status quo*. That is absolutely inevitable and it seems to me that you might possibly add a further safeguard by providing that if the Legislature does not act by July 1, 1949, the Governor shall then

act to allocate the departments and that his allocation shall stand until amended or changed by act of the Legislature. That would give him, at least, a second try at getting this job done.

I think that there is some fairly good ground for saying that this is primarily a legislative function, and I wouldn't quarrel with the way you have laid it out. However, I think that if you provided that the Governor could come in and do it if the Legislature didn't, you would be adding that safeguard to your program which would, perhaps, be valuable.

MR. SPENCER MILLER, JR.: Mr. Chairman.

CHAIRMAN: Commissioner Miller.

MR. SPENCER MILLER, JR.: May I ask Dr. Reed whether it is a more uniform practice throughout the country to have the initiative or leadership in the matter of consolidation of departments rest with the executive or the legislative?

MR. REED: I think that it has generally been done more frequently by the legislature than by the executive. I don't think that either has been done frequently enough to say that there is an established pattern or precedent of any great importance. I think that you are travelling on relatively untrodden ground because the number of real consolidations that have actually been effected and that have attained serious proportions is rather small, and you are starting out on something where you have to hew your own road if you are going to be successful.

MR. SPENCER MILLER, JR.: Does that argue in favor of having the double check?

MR. REED: That is one of my reasons for suggesting a double check in that you provide a second string to your bow. If the Legislature doesn't do it, perhaps the Governor will. I think that there is some very strong reason for suggesting the necessity of a second string to the bow.

My next point has to do with the point of removal for cause—the Governor's power of removal. He is given the power of removing the heads of departments at his pleasure, which is, I think, sound. I think they ought to serve at his pleasure. The director of a department is appointed by a board. The Governor is given the power to remove any other officer or employee of the State after investigation and after hearing, for cause. I merely want to call your attention to the fact that the words "for cause" have a legal concept which carries with it the right of the courts to review the action, not merely on the pure question of law which may be involved but also on the question of the right of the Governor to make a removal—the question of whether or not he has abused his discretion; and also upon detailed points of law and upon the facts as to whether the facts have actually been changed or not.

As I understand the practice in New Jersey, and it is true in many other states, in order to remove a person for cause you have to allege a definite infraction of rules or a definite neglect of duty, and then prove it by legal evidence. This makes it very difficult to remove a person. I am calling attention to this, perhaps not so much because I expect that you are going to change it, but because I want to point out that the power of the Governor with regard to removal is not an arbitrary or absolute power but a very, very restricted power indeed, which, as a matter of fact, cannot result in very many removals and would undoubtedly allow a good deal of inefficiency and incompetence to get by at the very best because of the difficulty of establishing "cause," in the legal sense of that term as it has been interpreted by the courts. You might give some consideration to some other phraseology which would avoid that. However, if you don't want to do that, you should at least point out to those who are critical of your section that the Governor's powers are not being exaggerated in this particular, by any means.

The next question that I have reference to is the Cabinet, which is in subsection 4 of Section IV, on page 11. I think that the Cabinet section as you have it here is not serious or sound. It doesn't seem to me that the Governor should be given power to name a Cabinet made up of any ten state officers he wants. He is able to go down into the ranks considerably; they do not have to be the heads of principal departments. The Governor can establish such a group of officials with whom he can consult without providing a section of this kind. I am inclined to think that you would do just as well to leave it out altogether. If you are going to have a Cabinet, it should consist of at least ten of the principal heads of departments. They, at least, should be in it, along with perhaps some other officers like the director of one of the departments that may be under a board. Something of that kind. I don't think it is necessary to specify that it should be ten. I think when you say a Cabinet of ten, and earlier say 20 departments, you are in a way confessing the fact that 20 departments is too many. It would be better to reconcile these two provisions.

My recommendation would be to omit subsection 4 altogether. But if you are going to keep it, you should provide that it shall consist of at least ten heads of principal departments, and such other officers as the Governor may designate.

CHAIRMAN: Excuse me, Dr. Reed, Commissioner Miller would like to ask you a question.

MR. SPENCER MILLER, JR.: Dr. Reed, the provision for a Cabinet in the Federal Government is entirely a part of the implied power of the President?

MR. REED: The Cabinet is not even mentioned in the Constitution of the United States.

MR. SPENCER MILLER, JR: And that, as a pattern for us to follow, would enable us not only to have reference to what is the model of good draftsmanship for that time, and certainly for our time, but would also enable us to effect this reconcilliation to which you refer, without having to spell it out in a provision. Do I understand, furthermore, that you feel that the Governor's power to create a Cabinet, either on a permanent or an *ad hoc* basis, would be implicit in his powers as the chief administrative officer?

MR. REED: Certainly. It is merely the power to consult, and he can call in such officers with whom he wants to consult. He can have a regular practice of calling in certain particular, specified officers, or he may not. They have changed the practice in the Government of the United States so that in recent years the Vice-President has sat with the Cabinet. Formerly, the Vice-President was not included in the Cabinet. No law was made about that. The President simply called up Henry Wallace, or whoever it was he began with, and said, "Come over, Henry, and sit in the meeting." And that's really all that has to be done in order to provide the Governor with a corps of advisors. I think you would avoid trouble, and you would certainly avoid the obvious contrast between the ten here and the twenty earlier, if you left this one out.

CHAIRMAN: Does this say ten, Dr. Reed?

MR. REED: This says ten, yes.

CHAIRMAN: Does it?

MR. REED: No. No number. I don't know where I got the idea there were ten.

CHAIRMAN: No, there is no number mentioned, Dr. Reed.

MR. REED: It is better that there is no number. I apologize. I somehow or other thought I saw ten in there, but I didn't. I'm sorry. That argument disappears, but the other argument still holds—that he might appoint to this body entirely inconspicuous officers, as this section is drawn. They wouldn't be the heads of the principal department and it might even get to be called a kitchen cabinet, and that would bring down a certain kind of discredit on your proposed Constitution—that is, if you don't want to give people a handle by which they can make something seem apparently ridiculous. This is such a good document that I would be very anxious to see you avoid that.

There is only one other thing that I want to suggest and that is something that you have omitted altogether, which was in the proposals of the Committee on Constitutional Revision—that a brief provision be made that the regulations of administrative agencies that affect the public shall not take effect until they have been pub-

lished. If there is any one abuse of the expansion of executive authority in recent years, it has been the expansion of the power of regulatory bodies, and regulatory bodies have become very numerous because state legislation is no longer passed in the detail it formerly was. In many instances it leaves a great deal of discretion as to what is to be done to the heads of departments. They are given the power to fill in the gaps in the statutes by their regulations and orders, and the public has been obliged in many instances to obey orders it did not know existed. In many places this practice has come to be abused.

It did in the State of Connecticut, and there we have adopted legislation—not a constitutional provision, but legislation—which provides that no orders or regulations shall take effect until they have been published by the Secretary of State. It also requires that they must have been approved by the Attorney-General as to form before they can be published. We found that there were a good many cases in which some of the minor regulatory bodies were issuing regulations which were not understandable and couched in language which raised all kinds of questions as to what was intended. In order to bring about some kind of uniformity and sound practice in draftsmanship, the legislature provided that they must go to the Attorney-General before they were published.

I merely throw that out as a suggestion. That is one thing that was recommended; the language that was submitted by the Committee on Constitutional Revision is very brief and I think it would be helpful. I think that while it leaves the matter to be attended to by the Legislature, it does express an interest in a matter in which a great many of the public are interested and which has caused a great many people a good deal of heart-burning in the last few years.

CHAIRMAN: Dr. Reed, in your opinion do you think this matter can best be handled by a constitutional provision or by legislation?

MR. REED: I think that the details of it have got to be handled by legislation. I think that you might make a gesture toward it by directing the Legislature to do it. There again, of course, the Legislature might not do it, but on the other hand I think it would show the people that you had an interest in restraining abuses of executive power. If you are going to get criticized for anything, of course as you well know, it is that you have increased the power of the Governor. I think you have done well in doing that. I think at the same time you have put the Legislature in its proper place and that that is going to strengthen the position of the Legislature. I think your course has been wise, but on the other hand you are probably going to be criticized for it. Now, by adding a provision of this

sort which looks toward the restraint of the Executive in one of the places where the executive authority has been abused, you would be strengthening your document.

CHAIRMAN: Judge Feller would like to ask you a question, Dr. Reed.

MR. FELLER: Dr. Reed, this suggestion of yours has not come about as a result of the various executive orders that have been issued by the National Government and several state governments, and which have had the effect of legislation?

MR. REED: Yes. There has been a lot of that—a great deal in the Federal Government and a good deal of it in the state governments; and some of it in the state governments is even more annoying than the federal because it is on a lower level and less notorious, and people suddenly find themselves subject to fine or penalty for disobedience of a regulation that they never knew existed. It isn't right, it isn't fair, and they should be protected from it. Now, I am not saying that these things have happened in New Jersey. I couldn't turn and lay my finger on any cases that have happened in New Jersey, but they have happened in Connecticut and they have happened in many other states, and they might happen here.

CHAIRMAN: Have you finished your—

MR. REED: Yes.

CHAIRMAN: In the matter of the veto situation where the Legislature could call itself back into session to override the Governor's veto, Mrs. Barus has found it. Mrs. Barus, would you read that section?

MRS. BARUS: This is in the tentative draft of the Legislative Article, Dr. Reed. I will hand this to you if you don't have a copy.

MR. REED: Yes. I have a copy.

MRS. BARUS: Paragraph 4, Section I (*reading*):

"Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of the Senate and of all of the members of the General Assembly and may be called by the Governor at such other times as in his opinion the public interest may require."

MR. REED: That is, the Legislature can call itself back into special session, but I don't think the two provisions coordinate, because you say¹ a special session of the Legislature has adjourned *sine die*, that session is over, and you give the Governor 45 days in which to act on that legislation, and you provide that it shall not become a law unless he signs it, thus giving him very definitely a pocket veto in that 45-day period. A special session of the Legislature summoned under that other provision would be an entirely different session of the Legislature and would have no jurisdiction over the act of the Governor with regard to the legislation of the preceding

¹ Tentative draft, Section I, paragraph 13.

session. If you're going to have the Legislature called back so that it can act upon the veto of the Governor after the session is over, it is likely to be by prolongation of the session of the Legislature in which that legislation was passed. You've got to have a definite constitutional provision that that session can act upon those vetos.

MRS. BARUS: In other words, after the 45 days have passed, up to which time they would not know what the Governor's action would be, the Legislature could not then act on the veto.

MR. REED: After the 45 days they might be summoned back and would then have a certain number of days in which to act upon the veto, or whatever vetos the Governor had made during that period.

MRS. BARUS: May I ask a question, then? Would you feel that it was wise to provide for an automatic recall of the Legislature to consider any veto?

MR. REED: Yes, if there has been a veto. If there hadn't been any veto it wouldn't be necessary for them to come back.

MRS. BARUS: I think the reason that was not put in is that we had a great discussion about this, and I think, if I do remember the Committee's reasons rightly, we were all opposed to a pocket veto. We thought that if the Assembly has to go on record about a bill, that the Governor should, too, and should state his reasons. However, it often happens in this State that in the mass of bills rushed through at the last moment, some of them have been ill-drawn, some of them have been in conflict, and in some cases we have even had the sponsor of the bill asking the Governor to veto the bill because on second thought he realized that it didn't exactly achieve what he was aiming at.

In other words, to call back automatically for vetoes in which there was no interest on the part of the Legislature seemed to us to be a little unwieldly, and we hoped—

MR. REED: It might be. Of course, in our State of Connecticut, the state is very small and it is very easy for the Legislature to get together. The legislators were very anxious to have this. They felt that the Governor had vetoed bills of theirs which they would have passed over his veto if they had had the opportunity, and when they were anxious to have it. Your circumstances may not have created that anxiety, but personally I don't believe in the pocket veto. Of course, in the Federal Constitution it was essential in the beginning, because they could not get Congress back in session again, the distances were so great. As a matter of fact, I don't think it is so difficult in New Jersey to get the legislators together. If there had been no veto, then the legislators would not assemble.

MRS. BARUS: The only way, in a sense then, to bring about what we want is to provide for an automatic recall to consider any veto. Is that right?

MR. REED: Well, you could provide that the Legislature might recall itself by petition to the Governor, and in that way it could act upon a veto. It would be possible to write something that would provide for the optional summoning of the Legislature.

MRS. BARUS: Without making it automatic?

MR. REED: Without making it absolutely automatic. To say that the Legislature should come back if there has been a veto and if a majority of each house asks to come back. That would prevent them from coming back if there wasn't anything serious that they wanted attended to.

MRS. BARUS: May I ask another question? This general right of self-call of the Legislature, as I understand it, is rather new, and it would seem to me it is an excellent provision. I can see no sense in having a sovereign body which had to meet at the call of the Governor but couldn't meet of its own desire. Do you think it is an interesting and good provision?

MR. REED: Yes, I think it's an excellent provision that the Legislature should call itself.

MRS. BARUS: In general, that is, without regard to the veto.

MR. REED: There are some of the old constitutions, like those of Massachusetts and New Hampshire, in which the authority of the Legislature to call itself is recognized and has been implemented by law. In Connecticut a question has just recently been raised and an attempt has been made to implement it by law. Suppose that during the interim of a session the Governor committed some act which required his impeachment and there was no way of summoning the Legislature except by the action of the Governor, who wouldn't summon. There would be grave reasons for having the Legislature have the power to summon itself.

CHAIRMAN: The provision, as it is worded now in the Legislative Article, leaves it up to the Governor.

MR. REED: He *shall* call—

CHAIRMAN: He shall call. But suppose he doesn't; then the Legislature can't impeach him. Of course, they could at the next regular session, couldn't they?

MR. REED: Of course, you can't compel the Governor to do anything. As I understand it, the civil process does not run against the Governor in New Jersey in his official capacity. You can mandamus him. If he failed to obey the order of the petition of the Legislature, the Legislature just wouldn't meet. I think it would be better if you had a provision that the Legislature should meet at any time on the petition of the majority of both houses, filed with the clerks of the two houses, or something like that. They would be entirely independent of the Governor's actions.

CHAIRMAN: Our technician, Mr. Miller, would like to speak on this question of the Legislature calling itself back.

MR. WILLIAM MILLER: Mr. Chairman, I would like to ask Dr. Reed whether in his judgment this question of the pocket veto . . . It really has two parts: One, the question whether a Governor should be permitted to kill legislation without indicating his action on it, and the second one, whether a Legislature should in all events have a second chance at the legislation and pass it over his veto. Would it meet with your approval if the language were to be changed so that in the event that the Governor did not disapprove the law on or before the 45th day after adjournment *sine die*, the bill automatically became a law without his signature on the 45th day? That would abolish the pocket veto. Now, as to the second question, is it advisable to provide in the Constitution for calling back a Legislature which may have acted at the end of the legislative year, and in that way run into the new Legislature? In fact, the one that passed the bill would no longer be in existence, with the result that in some cases, if the bill was passed early in the year they could come back, and in others they could not come back because that Legislature had expired.

MR. REED: In Connecticut the Legislature is limited to a five-months' session. It adjourns on the first Wednesday in June, in any event. Here, of course, you have no limitation on the length of your session. You might keep in session up to January, and under those circumstances that would raise a difficulty. If your Legislature, however, is normally going to adjourn in the Spring, there is no reason why it shouldn't come back.

MR. SPENCER MILLER, JR.: Just one final question, Dr. Reed. You said a moment ago, in describing the legislative functions, that you observed that the Legislature under this revised draft of the Constitution has in fact been strengthened, in a sense, by being made a real legislative body. You are one of the very few witnesses before this Convention who has had the privilege of not only examining these two documents but of testifying before the Legislative and the Executive Committees. May I ask whether you feel that there is a real strengthening of the Legislative Branch of the government, as you observed, which could be said to equate the strengthening which has gone on in the Administrative or Executive Branch of the State Government? Do you think, in other words, that there has been an effort, and a reasonably successful effort, to equate the powers of these two branches of government?

MR. REED: Yes. I think I would answer that "yes," if I had to answer that either "yes" or "no." I think, of course, that no Legislature today is in as influential a position, relatively, as the Legislature was in 1844. The complicated character of modern govern-

ment has made it necessary to leave a great deal more to the administrative agencies than was formerly the case, and the tendency has been to increase the power of the Executive, while the Legislature remains unimproved. As a matter of fact, however, what you have done is to restore, as far as it is possible to do it, the relative position of the Legislature and the Executive that ought to prevail. You have separated the two functions. You have made the Executive an Executive, a real Executive, and the Legislature a real Legislature and nothing else. And being a real Legislature, with very definite legislative functions, you include the power of appropriations, and the power of creating and allocating departments and agencies, and all that sort of thing. You have created a very powerful force, which is not diminished in the least by being confined within its proper limits. In fact, I think it has been increased by that means and I, on the whole, very highly approve of the general character of the work you have done.

CHAIRMAN: Would any other members of the Committee like to ask Dr. Reed a question?

Dr. Reed, I am sure I speak for every member of the Committee when I say that you have been very helpful and constructive, and it has been very interesting to have you appear before us. Thank you very much indeed.

(Applause)

CHAIRMAN: Commissioner Miller, will you introduce Dr. Graham, please.

MR. SPENCER MILLER, JR.: The second expert witness that the Committee on Constitutional Revision has invited to testify this afternoon is Dr. George Graham, Professor of Politics and Chairman of the Department of Politics at Princeton University. Dr. Graham is one of the authorities on administrative practice and procedure in this country, and during the war served for some three years and a half or more with the Federal Government.

It gives me great pleasure to present to the Committee in behalf of our Revision Committee, Dr. George Graham of our neighboring institution at Princeton University.

CHAIRMAN: On behalf of the Committee, Dr. Graham, we welcome you to talk to us.

MR. GEORGE GRAHAM: At the outset I should like to disclaim any qualification as an expert on state government. I am interested in executive institutions and in administration, but I am not specially qualified to talk on state government itself.

I have read this draft of July 15, but I have not studied it carefully, so that I think you can take my remarks this afternoon with a grain of salt.

I am not prepared to make any comment on Section III of the

Article on the Executive, or on Section II of the Article on Public Officers and Employees. Before commenting briefly on the various sections, I would like to say a word about basic premises here. I think everybody comes to a discussion of administration and executive institutions with some major premises in mind. I would like to state two or three.

In the first place, it seems to me there is no logical conflict between a strong executive and strong legislative and judicial institutions. It seems to me that they are complementary, rather than in conflict. In other words, I believe that the experience not only in this country but in other countries shows that a strong executive is essential to the maintenance of representative government and to the maintenance of the vigor of legislative as well as administrative institutions. I suppose there is no more striking fact exhibited by the experience of European countries in the last two or three decades. France is perhaps a particularly striking illustration of a country that was first in Europe to achieve national unity. A country that has had a long history of national statehood, yet it has for the last century been plagued by the weakness of its executive institutions, which have weakened its whole system of representative government. It has not had a strong, enduring, or adequate executive, and does not have today.

I remember reading in the middle '30s a part of the minutes of the meeting of the Inter-Parliamentary Union in which the burden of the plea was for the strengthening of executive institutions so that the representative institutions, the legislative bodies, might be preserved in European countries. This was an international equivalent of our Council of State Governments, made up of members of legislative bodies, and their judgment was that the strength of their legislative institutions depended in considerable part upon having an adequate executive to go with them.

The third point that I might make by way of preface is that if there has been any one weakness of American state government in the last two or three decades, it has not been that of an excess of vigor, or zeal, or abuse of powers. If there has been any difficulty it has been rather one of delay in recognizing and acting on problems. It has been one of weakness in making a state program a broad program, rather than simply developing a series of special programs for special problems. It has been one of hesitation, of temerity in dealing with serious problems. This is, interestingly enough, not something which has been a phenomenon simply of the '30s and '40s. In 1909 Elihu Root was speaking to the New York Constitutional Convention of that year and he made a very interesting statement in which he warned the delegates that the danger to the state was one of inactivity, of inability to act with sufficient promptness,

and that the danger to the state function came from that source rather than from too speedy or too vigorous action.

The fourth point that I think I would make in the way of preface is that an adequate executive helps a great deal in legislation, in the formulation of policy, in the development of a vigorous program. I believe that's a natural thing, since the executive institutions are not only a way of carrying out policies and decisions that have been made, but they are perhaps the prime source through which the experience that the government has is funneled back into the formulation and revision and development of policy. So it is natural that ideas and suggestions, initiative, should come from the administration through the executive.

I think it is also interesting to note, in this connection, that in every state, no matter how weak the office of governor or chief executive may be by law, the governor is always the key figure, and the whole trend of events and circumstances is to throw upon him the burden of responsibility, whether or not he has the power. If he doesn't have the power, he is forced to act by *sub rosa* measures, pretty much.

With these premises in mind in reading the document, I am very favorably impressed with this draft on the Executive. It seems to me that although it does not state the ideal in many circumstances, yet it is a reasonable document, reasonably conceived and certainly a step forward. It seems to me that it has a certain amount of consideration for the habits and history and the conditions in this State, which is proper. It's a structure, you might say, which is designed for the people who are to live in it. I think it is also reasonable to note that no constitution should be expected to create executive institutions. It should, however, provide for and stimulate their growth in the right direction. I think this document does that, but whether or not an adequate Executive will develop under this Article will depend upon the wisdom and intelligence and discrimination of the Governor and of the members of the Legislature, and also of the people of the State.

The first section upon which I have any comments to make is Section I, paragraph 5. The provision permitting the Governor to succeed himself is a realistic one, a desirable one. I personally would feel that he should not be limited to a second term, but I think I am reasonably familiar with the traditions and fears of certain people in the State, and this is a reasonable arrangement.

In this same Article, Section I, paragraph 11, it seems to me that in the first sentence, saying that the Governor shall "communicate the condition of the State," is an awkward bit of language which I don't fully understand. Later in the same paragraph—

CHAIRMAN: Doctor, would you mind referring to the page?

MR. GRAHAM: Page 7, paragraph 11, first sentence (*reading*):

"The Governor shall take care that the laws be faithfully executed and shall communicate the condition of the State . . ."

Well, I suppose it's clear but it sounds a little awkward.

I like the last sentence of this paragraph, which states (*reading*):

"(The Governor) shall nominate and appoint, with the advice and consent of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law."

This seems to me to be a good provision. The selection of key executive officials is an executive function, it is a matter in which the Governor necessarily has an interest, it is something upon which the success of the Governor during his regime depends. I believe that most experienced executives make this a major consideration, a major problem.

In contrast, it seems to me that the experience of legislative bodies in this and other states having the power of selection of key officials indicates that is is a function that is not well suited to the legislative body. The function of the legislative body is one of trying to see what the general problem is, what the general policy ought to be, rather than selecting a specific man for a specific job. It is also possible for extraneous considerations to be brought to bear on the selection, since the members of the legislature would not be responsible for the operation in question. I was amused to read just a few days ago a comment on the experience of William L. Marcy who, you will remember, coined a famous phrase more than a hundred years ago, "To the victors belong the spoils." Somewhat later he became Secretary of State, and at that time he very strongly urged careful selection of the personnel of the Department of State. A Senator reminded him of his famous phrase and asked if he had repented, and he said, "Of course not," but he might have said that, "A man ought to boss his own house." The very nature of the executive responsibility is such that the Governor is under great pressure to find the best person for the job.

CHAIRMAN: Dr. Graham, I don't want to be rude, but we've got a lot of people that want to be heard—if you'll move along a little faster, please.

MR. GRAHAM: Paragraph 12, the following section—I'd be a little bit skeptical as to whether that last sentence would have very much effect. I presume the effort here is to prevent a flood of appointments during the last week, but won't you simply, as the result of this, have the flood of appointments the next to the last week? That would not necessarily be a great improvement.

Paragraph 14 on the veto—the provision for the Governor vetoing a part of an item seems to me one which goes rather far. I don't think I'm opposed to it exactly, but it does put a rather heavy re-

sponsibility on the Governor in the sense that it permits the Legislature to put on the Governor the responsibility for a great many questionable items. In preference to that, you might consider whether you wouldn't want to provide for a veto on appropriation riders to other than appropriation bills. That would have the effect of focusing the attention on what in that bill was an extraneous issue.

Section IV, Administration, the provision for allocation of functions or, in effect, reorganization by law is, it seems to me, doing it the hard way. I have no doubt that it can be done, but the experience of the State and also the experience of the Federal Government would indicate that it is very hard to do it that way. The provision in the Federal Government by which the President under statutory authorization submits a plan to the Congress, is one which was not conceived in the Executive Branch but in the Congress. After some 20 years of experience in trying to do something about it, Congress finally came to the conclusion that this was not something that it was able to handle through the normal process, so this arrangement for an executive submittal of a plan with provisions for legislative veto was worked out by members of the Senate, and I think that experience is also significant. As to the item later in the sentence, 20 principal departments, I think that is a generous allowance, but I suppose it is a little bit like golf. When you tee up, you came make as many shots as you want to to get into the cup, but you don't have to use them all.

In the following sentence, there is a provision for the appointment of temporary commissions for special purposes. I would suggest that consideration be given to limiting the life of temporary commissions. That might avoid any ambiguity which otherwise might arise.

Paragraph 2 of Section IV, the provision that each principal department shall be under the supervision and control of the Governor, seems to me to be sound. If you bear in mind that the legislative body always has the power to specify what are to be the duties of the executive departments and key officials in those departments, there is no serious problem raised if the Governor should try to control the discretion of subordinates in individual cases.

It can also be made a matter of record where the law vests a function in a subordinate. In that way the subordinate is protected. I was talking a few days ago with a friend of a bureau chief who gave me an example of how it works in his office. He cited this instance. He differed with the head of the department as to what his actions should be in exercising discretion under the law. The law vested the authority in the bureau chief. He simply took his position to the head of the department in writing and said, "Unless

you direct me to the contrary, I will handle the matter in this way." That had the effect of letting him go ahead and take full responsibility for all decisions.

The provision in paragraph 3 for boards and commissions is a reasonable compromise, but I don't think that it is an ideal arrangement. I would much prefer to see the government set up for the most part under the preceding section. But this does seem to be a reasonable compromise, and I don't believe it is desirable in a constitutional document to limit the legislative discretion too closely.

In paragraph 3, in the last sentence, it is provided that any principal executive officer shall be removed by the Governor for cause, upon notice and with opportunity to be heard. I think this provision could be improved if there were an additional statement indicating what the nature of the judicial review should be in this instance. I would suggest that a clause be added which would make it clear that "at the Governor's discretion, if exercised in good faith and in accordance with the procedures prescribed by law," his decision would be final. If so exercised, his judgment should not be reviewable by the courts. It seems to me that this is an executive question, not a question that the courts are best qualified to go into. Finality of executive discretion would be desirable.

Paragraph 4 on the Cabinet seems to me to be all right as a provision. I don't believe it is possible to develop a Cabinet legislatively or by constitutional provisions. Cabinets are very difficult to create. This is a hint to the Governor that he ought to try. Whether he will be able to succeed or not is a question. The more flexibility you leave him, I think, the better it is. I think that a hint to the Governor to develop a Cabinet is quite desirable. You have gone about as far as you can in making that hint; it is a rather good provision.

In paragraph 5, the last sentence, I would make the same comment as on paragraph 3—that it is desirable here to provide that removal be at the Governor's discretion. If exercised in good faith and in accordance with the procedures prescribed, his discretion should not be reviewable.

In the Article on Public Officers and Employees, the provision on civil service, paragraph 2, seems to me to be a good one. The last clause after the semicolon, *i.e.*, the exception with reference to veterans could be improved if it were provided that preference should be terminable. It is highly desirable to absorb as many veterans as are needed who can qualify for public service after the period of warfare. But as you go beyond that period, and as the ranks of those who are qualified have been exhausted you can no longer take care of veterans adequately under civil service. Those in need should be taken care of in other ways.

I will pass over to the last clause of the last Article, the instruction to the legislative body to make the reorganization before July 1, 1949. There is no provision for enforcement of instructions to legislative bodies even though clearly of a constitutional character. They could not be enforced unless there is some alternative provided. It would seem desirable here to provide for an alternative in the event of a deadlock or in the event of failure to act. I would suggest some form of executive action be provided for in the event that there is no legislative action.

I have no further comments.

CHAIRMAN: Thank you very much.

Would any member of the Committee like to ask any further questions?

(Silence)

CHAIRMAN: Thank you very much sir, for appearing before us.

I would like to ask Mrs. Ralph Barnehenn, Legislative Chairman of the State Federation of Women's Clubs, to speak to us now.

MRS. RALPH BARNEHENN: Mr. Chairman, and members of the Committee:

First of all, I want to thank you for permitting me to appear now. I am grateful for this under the circumstances, because I do have to get home. I have a family.

As legislative chairman for the New Jersey State Federation of Women's Clubs, I wish to say that I am pleased with the tentative draft that you have prepared, and you are to be congratulated on your promptness.

We wrote on three items in which we were fundamentally interested, two of which you have included. The third one seemed to go by the board. That was for a Lieutenant-Governor. Now, we still feel that a Lieutenant-Governor is essential in the State, the reason being that it's a going business organization and a vice-president is necessary in a corporation. He has many offices to perform, and in many instances he does a major part of the "leg-work" for the president. A Lieutenant-Governor could act the same for the State. I was born and raised in Pennsylvania, so I was very much surprised to come to New Jersey and find that you didn't have one. But one learns as one grows older.

The other two items that you have included are in your Section IV, namely paragraph 2 and paragraph 4. We are happy to see that the Governor is permitted by this Article to have a Cabinet if he so wishes. I am looking forward to your second draft.

I again thank you.

CHAIRMAN: Would any member of the Committee like to ask Mrs. Barnehenn any questions? . . . Mrs. Barus.

MRS. BARUS: What were the other two points besides the Lieutenant-Governor?

MRS. BARNEHENN: The other two points were included in Section IV, that is, for the department heads to report direct to the Governor, and the other one was the privilege of selecting various persons for his Cabinet.

CHAIRMAN: Thank you. . . . Are there any further questions?

(Silence)

CHAIRMAN: Thank you again very much, indeed. I am very sorry to have kept you waiting so long.

The next speaker is Edward A. Markley in behalf of the New Jersey Civil Service Employees' Association.

MR. EDWARD A. MARKLEY: Mr. Chairman and members of this honorable Committee: I realize that you are near the end of the day—

CHAIRMAN: It isn't midnight yet.

(Laughter)

MR. MARKLEY: I know, but you have had a rather long day and a rather hot one, but I won't hurry, if you don't want me to. I have prepared, on behalf of the New Jersey Civil Service Association, a memorandum as its counsel, and I have copies here.¹ I would like to give a copy of this to each member of the Committee, if I may.

(Memorandum distributed to committee members)

With me at this time are three members of the State Association: Mr. Joseph Mulligan, Mr. Frank Walker and Mr. Fulton Hartley, who have been working for civil service in this State for many, many years. This memorandum which I have prepared is primarily their effort. They deserve credit for it, but I fully and heartily approve it.

Back in 1944 when we submitted a revised Constitution in the general election on November 7, we had in that Constitution a provision on civil service which was given very careful and exhaustive consideration. It was concerted. I have that before me. It was Section I of Article VI on Public Officers and Employees. Our provision as we have drafted it today is substantially the same as it appeared in that proposed Constitution. The only difference is that in that draft, paragraph 2, Section I, Article VI said: "In the civil service of the State and all of its civil divisions, all officers and positions, etc." That was somewhat ambiguous and our Association at that time objected to it for that reason, because it would have lead undoubtedly to litigation. It was problematical as to what was meant and it might have affected employees who were in the civil service of the counties, municipalities, etc., of the State.

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

In our draft that we are submitting to this Committee and to this Convention we have, I think, clarified that ambiguity by using the same type of language that is used in all statutes which are to apply to the State and all of its subdivisions. The draft that we present has, I think, been approved substantially by New York State. In the New York constitution there is a provis on which is substantially similar to ours, and it has been in the New York constitution since 1894.

Now, in this memorandum that I have presented to your honorable Committee I have given some of the facts and statistics. Many more can be obtained, if you are interested, from the 39th annual report of the New Jersey State Civil Service Commission, which covers the years 1944, 1945 and 1946. I think our figures are a little bit later, but that annual report of the State Civil Service Commission is a revelation with respect to civil service as presently adopted and administered in this State. It is a marvelous thing for the citizens and taxpayers and for the individual who works for the State, who is worthy and efficient and whose service is recognized.

Just briefly, may I refer to some of those?

Since this merit system has been established, the overwhelming majority of the electorate has recorded its vote down through the last 37 years in favor of it. In referenda submitted since the decision of the Supreme Court which said that the State could not impose civil service on subdivisions except by submitting it to the voters, 78 per cent of the voters have favored this system for public employees, while only 22 per cent have voted against it. All of the larger counties, I believe 14 or 15 of them, have adopted civil service. The entire state service under the Civil Service Act has a population of 4,160,065. The population of the counties which have adopted civil service is 3,774,781. This represents 90.74 per cent of the entire State. The population of the municipalities which have adopted civil service is 2,735,795. All of the larger cities, all of the larger counties, and many, many of the smaller cities and townships have adopted civil service. In addition there are a number about to come under civil service.

I don't really think, Mr. Chairman and members of this Committee, that there is any logical argument against civil service. There is no argument. It has proven its merits. New Jersey has been in the forefront of the nation with respect to civil service, and has been referred to frequently. Its personnel has gone all over the United States and brought about civil service in other parts of the country.

The only question that will probably arise in the mind of any of you as to this is whether it should be in the Constitution, or whether it shouldn't simply be a matter of statute to be passed by the Legislature. The disadvantage of this latter is apparent. This

is one of the greatest things to put into the fundamental law of the land—the question of making civil employees secure in their positions if they render proper service. They are, nevertheless, removable for cause or for inefficiency or for economy, and that is directly in line with the provisions that you have that the Governor can remove for cause. But if there is no cause they should not be subjected to the changing times and to the changing political organizations and removed at will. They should be protected, which, as I said in the beginning, has proven to be for the advantage of everybody concerned.

Now, the provision that we have drawn is a simple one. It is clear. It is easily understandable, and I think that considering there there are right now 62,000 persons protected by civil service in this State, and since this has proven its value, and since it has been overwhelmingly endorsed by the voters of our State, that it is unquestionably one of the distinct provisions for government that should be made part of the Constitution, of our fundamental law.

I think that sums up my memorandum, and I do hope that because I have been brief that you won't think that I am not serious about this thing. I am most serious, and most anxious to have this matter given serious consideration. Although this has been presented to the Committee on Rights and Privileges, I understand that there will be no chance for our organization or members to have any argument before the Convention, and I therefore greatly appreciate this opportunity which you have afforded me to come here and present our memorandum.

CHAIRMAN: Mr. Markley, I can assure you that you do not have to convince the Committee of your sincerity. I assure you of that.

Would any member of the Committee like to ask Mr. Markley a question?

(Silence)

CHAIRMAN: Thank you very much sir, for appearing before us. I am sorry that you had to wait so long.

Mr. George Condit, First Vice-President of the State of New Jersey Motor Vehicle Agents' Association.

MR. GEORGE CONDIT: Mr. Chairman and members of the Executive Committee of the Constitutional Convention:

You will probably remember that I contacted you a short time ago relative to this matter. I might say that there are 142 motor vehicle agents in the State of New Jersey, extending from Cape May to Sussex County, and that these agents, because of the fact that they are businessmen as well as agents, contact a great many persons. I was appointed chairman of a committee to simply watch the proceedings of this Convention. When I had contacted you the other

day, I thought my duties might well have been done when I learned that the identity of our department was not in any way threatened. But we had set up a program of fact-finding throughout the State, and had asked 142 agents to contact the leading people in their various communities and to report through the county representatives of this Association through a series of meetings. This has been done.

This Convention seems to have been well organized and the Committees well synchronized. I find twin effects in the Legislative Committee and in the Executive Committee, namely, the Executive Article, Section IV, paragraph 2, and the Legislative Article, Section V, paragraph 5, both of which are to place definitely out of the hands of the Legislature and into the hands of the Governor the appointive powers of all of the agencies in the State. We don't have any—strange as it may seem—fault to find with the effect of that. It is merely with the method.

First, let me say that we seek no special privilege or favor for our department. This committee was appointed to observe the work of the Constitutional Convention, and we are satisfied that there was no loss of identity threatened. As we received the reports from the 142 agents and tried to make a compendium of their thinking, it was very difficult. As you quite well know, it is very nearly impossible to get a real cross-section of how the public thinks in these matters. But this was very clear to us—and I am not speaking of agents, I am speaking of lawyers, doctors, bankers, etc. There seems to be an undercurrent of this nature: Neither the Constitution nor the legislative enactment will take the place of honesty, common sense, or good human relationships among the Executive, the Legislature, and the people. The people are suspicious of locking into the Constitution executive powers that could easily be conferred by legislative enactment.

I have heard that expression here this afternoon repeatedly, and our objection is that you are, by these two sections and paragraphs or sentences, locking for all time or for a hundred years into the constitutional government of the State what might be by many considered a prerogative of the Legislature to decide.

We are not seeking for even the selection of any specific way, but simply that it be left to the Legislature to determine how the heads of the departments are appointed.

Recently we had a demonstration in the State of one of the things that the people seem to stress, effective executive leadership, when the Commissioner of the Alcoholic Beverage Control Department was continued in office through the persuasion of the Executive. That, we feel, is a very fine illustration of proper power develop-

ment. The great power of the Executive is shown in his skill in securing the point he was after with the Legislature.

Right here we offer the thought that the State may well be better served by an Executive who is compelled to develop effective leadership, than by increasing his administrative powers, which must be termed patronage powers.

We take 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."

We also take exception to Section IV, paragraph 2, and the following sentence is what we object to (*reading*):

"Such single executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at his pleasure during his term of office and until their respective successors are appointed and qualified."

We would like to see inserted after this clause, "unless otherwise provided by law,"—changing it very little, but leaving it flexible. Now, we don't seek to dictate how this should be done.

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 for any particular method of appointing or selecting these department heads, but it 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 in 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 the moment be realists. I was advised not to use personal illustrations so I will not name the names, but you can readily substitute them. Do you, the members of this Committee, for one moment believe that one of the greatest—and this name has been applied to him by newspapers all over the country—political bosses in our State, uses the same mental processes as one of the greatest educators and administrators in our State, in evaluating these two clauses and what they might do for the government of the State of New Jersey? The political boss might be thinking of building up a machine from which the people of this State might get very little benefit in the way of efficiency and economy, and which might be very difficult to get out of power, where the educator and administrator would be thinking of build-

ing up a very fine type of government. Now the political boss is smart, and he would give us good men and they would do their job well, but they would never lose sight of that one pertinent fact, patronage power.

The American system of checks and balances is not perfect, but for 158 years its average performance stacks up well with any other system on earth. If the legislators are honest and wise enough to make our laws, let us trust them to distribute the appointive powers in accordance with the dictates of their conscience and the wishes of the people.

We are not seeking to fix a method of electing or appointing the department heads, but to make it easy to try what is best at the moment, and change it when experience indicates that it is wrong.

We ask the elimination of Section V, paragraph 5, of the Legislative Article, and the change that I have indicated.

CHAIRMAN: Thank you, sir. Would any member of the Committee like to ask Mr. Condit a question?

(Silence)

CHAIRMAN: Thank you for coming, Mr. Condit. Sorry you had to wait so long.

I would like to hear from Mr. Louis E. Thompson. I believe he is president of the Small Business Association of New Jersey.

MR. LOUIS E. THOMPSON: Mr. Chairman and gentlemen of the Committee:

I won't take but a few minutes of your time. I had the temerity to come and ask to speak to you because of my experience in over three years of interpreting OPA regulations for the grain and feed trade, which convinced me that it is very difficult to make even intelligent businessmen understand the laws and regulations and Constitution. Commissioner Miller has said that you are endeavoring to make the language of your section easily understandable. I commend you in that.

My other point is that if you exercise still more endeavor to continue to keep the language plain, it will be a large selling point for this Constitution to the great number of small business people. I feel that I am authorized by the opinion of small businessmen that I know to speak on only one of the sections of your proposed Constitution. That is in Section IV, the first paragraph, in which you say that there are to be at least, or not more than, 20 principal departments. I think it would be helpful if you could reduce that number and make it known that you were doing it with the idea of economy in the cost of the government of this State, which is getting larger all the time and which I understand is not even large enough now to supply all the services necessary. If you had fewer

departments, then when hard times come again, if they do, I think you could as a matter of organizational procedure reduce the number of commissions and the expense thereof, the number of employees, if these commissions were subheaded under a smaller number of principal departments.

I suggest that that is a good selling point to sell this new Constitution to the people of this State, if you could introduce this idea of economy. I realize that it is a matter of taxation. However, you are providing here by this method a reason for expense, which the Committee on Taxation has nothing to do with. We have had the same thing in Washington. Which comes first, the reducing of appropriations or the reduction of the tax rate? We find that it is more difficult to reduce appropriations than it is to reduce the tax rate, judging by the number of votes in Congress. Perhaps the same philosophy obtains in New Jersey. So that is the only recommendation that I would make—that if you could in this particular instance indicate a spirit of economy, you would have a better chance to have this Constitution adopted, I think, by the small business people who are becoming more and more alive to the cost of government.

CHAIRMAN: Anybody like to ask Mr. Thompson a question?

MRS. BARUS: I think it would be interesting just to say to Mr. Thompson that, of course, this 20 does not mean that there will necessarily be 20. We have heard many comments to the effect that it should be less than 20. But it was to avoid the possibility of embarrassing the Legislature in combining the departments to a limited number.

MR. THOMPSON: Well, Mrs. Barus, I have the idea that if it is possible to have 20, we will have 20 sooner or later, and you are writing a Constitution for a long period of years. At least, I hope you are. To speak in what we call the realm of conjecture, it is quite possible that this State sooner or later should have a separate commission, well-manned, to serve the small businessman of the State. The States of Ohio and Illinois already have small-business commissions. I submit that it would not be necessary to have a principal department for a small-business commission in this State. It could be a commission in one of the other departments, and when the times became so good that it was not necessary, or for any other reason it was not necessary, it would be easier to dispense with it if it was a subcommission under a larger principal department.

CHAIRMAN: Any other questions?

(Silence)

CHAIRMAN: Thank you very much, Mr. Thompson. Sorry you had to wait so long.

Is Mr. J. Goodner Gill in the room?

MR. J. GOODNER GILL: Yes.

CHAIRMAN: Mr. Gill, I humbly apologize that you had to wait all this time, and we certainly admire your patience and fortitude.

I wish to introduce Mr. J. Goodner Gill, Dean of Rider College, and a past president of the Trenton Kiwanis Club and the New Jersey Crippled Childrens' Commission. Mr. Gill.

MR. GILL: Mr. Chairman—

MRS. BARUS: They are two separate things, aren't they? Past president of the Kiwanis and now a member of the New Jersey Crippled Childrens' Commission?

MR. GILL: That is right . . . Mr. Chairman, members of the Committee, ladies and gentlemen:

As one who is proud to be a citizen of the great State of New Jersey, I greatly appreciate the privilege you have given me this afternoon of expressing my humble views regarding the proposed draft of the Executive Department. At the outset, I should like to take this occasion to commend and praise Governor Driscoll and his associates for their foresight and vision in advocating a constitutional revision. At the same time, I would like to express praise to Doctor Clothier and Rutgers University for the excellent conduct of these proceedings. This has been my initial appearance here, and I have been greatly impressed with the conduct of your meetings. This, to me, is a true example of American democracy in practice.

First, I would like to say that I am in wholehearted support of the constitutional revision. This State for decades has been operating under an archaic Constitution that is totally incongruous with current needs. We are operating a 20th Century government under an 18th Century Constitution, and it is long past our needs. One time someone asked the late, great Rufus Choate toward the end of his fruitful life how he felt. He said: "Fine, except my constitution is worn out and all I have to live on now are my by-laws." That's about the way we have been existing in this State for many decades. We are not functioning as a constitutional government. The Constitution is too old, and I would certainly stress the need for a constitutional revision.

I, secondly, am in total support of your proposed draft. I think it has been given very scholarly treatment. I think it represents all phases of our life here in New Jersey, and I think it is a very fair, a very equitable compromise of the various opinions in the State.

May I digress for just a moment to say that I want to lend my total support to what Governor Driscoll said this afternoon regarding taxation? Our present system here in this State and in the country as well is totally inequitable, and I for one would like to advocate revision of that measure in order that we may have a more just and fair system of taxation.

There are just three minor points of your draft which I would like to stress and advocate support of. I believe that we should have the opportunity for succession by the Governor here in New Jersey. I believe that it will help us to get good men continuously. If a man does well, he is entitled to another term. If he should not do such a good job, then it is up to the people to place a new man in his position in the second term. I do not subscribe to those who feel that it will give the Governor great power, that he would build up a terrific machine and that we would have, maybe, bossism here in New Jersey or any place else where you may have such a system. You will have a political machine no matter whether you have a Governor in office for one term or for more, and I believe a man should have a second term to prove his own record and to do a better job for the State as well.

Secondly, I do believe in the departmental organization as you now have it set up. I believe you have materially reduced the number of departments in limiting them to 20. To my way of thinking—and I don't wish to be contrary to any of the expert views expressed here this afternoon—I do not think 20 is too big a number. And I think the Governor should have a Cabinet composed of departmental heads. At the present time, our Governor here in New Jersey, no matter who he may be, is nothing more than a figurehead. He is practically powerless. I think he should be given, not additional powers as some have expressed here today, but be given the just and rightful powers which go with his office. It will tend to throw more responsibility upon his shoulders, and there again, as someone expressed this morning, we will be able to find out who's doing a wrong job if something should go wrong. As it is presently and in our Federal Government, it is hard to find out who is doing the poor job or who is responsible. Our Governor has never had, in my humble judgment, the power that rightfully belongs to him. Through our system of checks and balances we will always be able to keep the reins on the Governor. The fears expressed about giving him too much power are, I think, false.

Thirdly, I believe in the strengthening of the veto power so that a two-thirds majority will be required to override a Governor's veto. His present veto power is absolutely meaningless. I have discussed those three points among others that you have so adequately brought out in your draft.

In summation, I think there are three principles which we should keep in mind, and I believe your Committee is doing that. The first is that government should always be the servant and not the master of the public. Secondly, the type and form of government that we have is less important than the character and integrity of the men we put in office. Thirdly, we should always keep in mind

the ideal of sound, efficient and capable government. I believe your Committee and your Constitutional Convention are proceeding along those lines. I wish you much success in your future deliberations, and thank you again for the opportunity of addressing you briefly this afternoon.

CHAIRMAN: Thank you very much, Mr. Gill, for waiting so long and saying those nice words to us. We appreciate it very much.

Anybody else here that would like to speak to this Committee? Mr. Becker.

MR. CHARLES BECKER: Senator, ladies and members of the Committee:

I am State Judge Advocate of the Veterans of Foreign Wars. I appeared before four other Committees. This is the fifth. I decided to come down here in my car, and I got stuck in New Brunswick in the business section, and I had a lot of trouble. Nevertheless, being mandated, I thought I would come here, and I do want to be brief. I am speaking on Section III, the Militia.

We are rightly concerned as veterans and soldiers in reference to our State Militia. We are also concerned about our great sovereign State and the right of protection of our people. At our convention in Asbury Park on June 20, we went on record. I know that our Quartermaster Adjutant-General of the State Department, Ben Thomas, spoke on this matter, and I asked him to come here to present his views. Now, could you tell me whether or not the short resolution that was prepared and submitted to the 50,000 members of the Veterans of Foreign Wars of this State was presented to this Committee?

CHAIRMAN: Mrs. Barus?

MRS. BARUS: Someone known as your Departmental Adjutant, Ben Thomas, spoke to us this morning, but I think he did not submit the exact wording. He expressed the opinion.

MR. BECKER: Well, it is short, and I will be brief. I know the hour is late, and I do want to say that we are concerned about the appointment of officers by our Governor. I think that they should be qualified, they should be experienced, and they should have a background of military training. According to the proposal, which is tentative here, we don't think that a Governor who, by the way, happened to be a layman, having had no military training, should be permitted to appoint and discharge officers at will, without cause or without court-martial. We don't think it would be fair for the Governor, if he has a friend who happened to be a carpenter, to make him a colonel, while the men who have served not only in the first war but in the second war should absolutely be denied their right of promotion on their record and reputation. We think that these officers should be recognized, provided they are qualified in

accordance with the United States War Department. They should be given that consideration.

We know something like this happened immediately after the first war when, under the late Governor Edwards, a similar proposition was presented and we went on record opposing it. We want qualified men. We want men of experience. If they are unfit and not qualified, they should be removed by a competent board that understands and knows the working order of our militia. Years ago it was somewhat of a disgrace for anyone to join the State Militia because it was considered to be a joke and a disgrace really to wear the uniform of the militia.

Now, if you are going to tear down that which we have today—something for the boys to go in and know that they are going to be recognized and that they are going to function under experienced individuals—we know that we are not going to get the quota that we are entitled to. Up to the present time we are unable to get the men into the militia. We need it. It is part of the strong armed forces of our United States Government. I can assure you that we are not talking for the benefit of our generals who are connected with the organization today, but we are in back of their proposition. If we can't believe our generals and know what they are talking about, then we shouldn't have a militia because we are going to spend a lot of money. We do want that proposition and recognition. Therefore, we ask that you give that further consideration.

Now, I do say that we are going to fight and fight hard to maintain the standards of the militia. We think it is a great organization, and that it should be so recognized. But I know that since this proposition has been presented, some of our officers are really disgusted and they are downhearted in what is trying to be enacted in our Constitution. Therefore, this matter was brought before the members of the VFW. We oppose the resolution the Committee proposes. The proposal is opposed because of the discrimination against the military and the naval officers and the employees of the State, in that it specifically removes their tenure while specifically preserving it for civilian officials and employees.

It removes the tenure of hundreds of veterans of World Wars I and II, who under the existing Constitution can only be removed by courts-martial, and who were appointed because of their military ability and experience.

It exposes the militia to political manipulation, particularly in the staff at the State Headquarters where the Governor is permitted to "hire and fire" officers at will, without regard to their ability.

We deem the following facts to be self-evident: It is the responsibility of New Jersey (and every state) to make adequate provision for the National Guard and Naval Militia under the American

policy of national defense and internal security; these organizations should be highly efficient, should be administered by the best obtainable leadership and should conform in all respects to federal standards; the Governor should control the military and naval forces of this State through a personally selected Chief of Staff who, however, should be a high ranking officer of such proven ability and experience as to command the respect of the forces; the military and naval forces of this State should be completely free from party or factional politics.

It is therefore recommended that the Constitution make provision as follows:

The Legislature shall make provision by law for the maintenance of an organized militia as authorized by the United States, commensurate in strength and efficiency with the wealth and population of New Jersey; control to be exercised by a Chief of Staff, to serve at the pleasure of the Governor, but to be selected only from federally recognized officers; all officers to be selected and promoted according to the standards established by the War Department for officers of the National Guard and Naval Militia; no officer to be removed except by court-martial, efficiency board or retirement for disability or age; and those objectives preferably to be accomplished by the establishment of a Department of Defense, to include provision for civilian defense and internal security.

Thank you.

CHAIRMAN: Does any member of the Committee want to ask Mr. Becker a question?

(Silence)

CHAIRMAN: I can assure you, Mr. Becker, that it is not because we are not interested in the subject, but we discussed this for about an hour and a half this morning.

MR. BECKER: I know you have, Senator.

CHAIRMAN: Thank you very much for coming. I am sorry that you had to wait so long.

Is there anybody else in the room who would like to appear before this Committee? If not, Mrs. Barus just has two short announcements to make.

MRS. BARUS: Mr. Chairman, just for the record, this morning there were two other gentlemen here who wished to address us but were not able to wait: Mr. Harvey L. Louen, Executive Secretary of the Chamber of Commerce of Asbury Park; and Mr. Thomas Smith, a member of the Board of Commissioners of Asbury Park. They came here to express their approval of the draft, but they were unable to speak in detail.

CHAIRMAN: I now declare the public hearing at an end. . .

Members of the Committee, we shall meet tomorrow morning. May I have a motion?

MR. FELLER: I move we meet at eleven o'clock tomorrow.

CHAIRMAN: Shall I declare the motion out of order? . . . Do I hear any other hour mentioned? . . . Any discussion on the eleven o'clock motion? Wouldn't ten o'clock be better?

MRS. BARUS: Mr. Chairman, before the vote, I would like to say that in the absence of Senator Van Alstyne and Judge Feller a week ago today, I attended a meeting of the chairmen of the various Convention Committees. It was agreed there that this draft, accompanied by a report, which is a sort of commentary on the draft I should say, must be filed with the Secretary not later than Thursday, the 31st. I think you should know that that was declared to be the rule of the Convention. That was in order to allow it to be printed along with the others so that by next Tuesday, a week from today, they could be handed to the delegates. Then the Convention will recess for one day in order to give everyone time to study, and all proposals will be put on second reading on Thursday, the seventh of August. I think I should let you know that before you decide.

CHAIRMAN: Thank you. You are a star ally, Mrs. Barus. We will meet at eleven o'clock tomorrow morning and will stay here until we finish, be it ten o'clock, one, two, or four o'clock in the morning. Is that agreeable? Is that understood? All in favor of the motion, say "Aye."

(Chorus of "Ayes")

(The session adjourned at 5:30 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, July 30, 1947

(Morning session)

(Executive session)

(Minutes)

A business meeting of the Committee was held in Room 109 in the Rutgers University Gymnasium at 11:00 A. M., Wednesday, July 30, 1947.

Members present were: Chairman Van Alstyne, presiding, Barus, Eggers, Farley, Hansen, Miller, S., Jr., Smith, J. S., Walton and Young.

The Secretary stated that she was in the process of correcting all the minutes and records of the proceedings of the Committee so that there would be a perfect copy in the archives. She offered to correct and compile a complete set of these records for any member of the Committee who would like to have one.

The minutes of the previous meeting were approved.

The Committee then took up in order the various proposals put before it by other delegates and by citizens appearing at the hearing.

On the proposals of Delegate Park, *Eggers* moved to eliminate the word "But" in paragraph 5 of Section I [of the Article on the Executive], on the Governor's term; and also to change "of" to "on" in line 2. Motion seconded and carried.¹

Young moved not to change paragraph 2, of Section II [of the Article on Public Officers and Employees], relative to the impeachment procedure.

It was voted upon motion duly made and seconded not to change paragraph 3 in accordance with the proposal of Mr. Rudolph Vogel.

There was a discussion of the elimination of the pocket veto, and the suggested provision made by the Committee on the Legislative.

Smith moved to adopt the sense of this proposal. Motion seconded. Motion withdrawn.

Young moved to adopt the proposal to eliminate the pocket veto, with the change in wording suggested by Mr. Miller,—“disapprove” instead of “fail to sign.” Motion seconded and carried.

¹ References are to the printed tentative draft of the Committee Proposal, reprinted in Volume II.

There was a further discussion of legislative reconsideration of vetoed bills, and of the difficulties of providing for automatic reconsideration.

Farley moved to provide that the Legislature shall reconvene on the 47th day, excepting Sundays, after adjournment *sine die* to reconsider vetoed bills, provided that this 47th day does not fall after the second Tuesday in January, when another Legislature might be in office. Motion seconded and carried.

Barus moved that the Committee recommend to the Committee on the Legislative that the Legislature be empowered to reconvene at the request of one-third of the members of both houses by petition to the Clerk and Secretary. Motion seconded and carried.

Barus moved to incorporate the second proposal of the Committee on the Legislative providing for the election by joint session of the State Auditor. Motion seconded and carried.

The Committee took up in turn each letter and statement that had been submitted to them.

On civil service and Mr. Markley's draft, there was a discussion of the difficulties of civil service in small towns, and of the inability of the people to withdraw from the system once it had been established by referendum.

Farley advocated including a clause in the Constitution to oblige the Legislature to grant to the people the right to recall by referendum any action taken by referendum. Mr. William Miller pointed out the great difficulty of drawing such a clause because of the many cases where it would work harm—in referenda authorizing bond issues, for example.

Farley moved that Mr. Miller be instructed to attempt to prepare such a clause. Motion seconded and carried.

Smith moved to disregard the Markley draft. Motion seconded and carried.

Farley moved that the paragraph on civil service remain unchanged. Motion seconded and carried.

The suggestion of Mr. Arthur Vanderbilt in regard to a Comptroller as well as an Auditor was discussed. The Chairman explained the difference in the functions of the two officials. Senator Young spoke in favor of having both officers in the Constitution.

At this point Judge Feller entered.

It was decided to ask the Committee on the Legislative if they felt that the interests of the Legislature would be adequately protected with one fiscal officer, or if they wished to include a Comptroller also.

The Committee recessed for luncheon.

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Wednesday, July 30, 1947

Afternoon session

(Executive session)

(Minutes)

The Committee reconvened at 2:15 P.M.

Members present were: Chairman Van Alstyne, presiding, Barus, Eggers, Feller, Hansen, Miller, S., Jr. and Smith, J. S.

The Committee resumed discussion and action on the proposals before it.

No action was taken on the suggestion of Mr. Drury W. Cooper on requiring a two-thirds veto in the house of origin of a bill only.

No action was taken on the proposal of Mr. Paul Sauerland, Secretary of the State Council of Organizations of the Blind, on appointment by the Governor of the Commissioner of Institutions and Agencies.

Barus moved to change "another" to "a new" Governor, paragraph 6, Section I [of the Article on the Executive]. Motion seconded and carried.

Paragraph 7, Section I—at the suggestion of Mr. William Miller, *Barus* moved to use the same words to cover the inability of the President of the Senate and of the Speaker of the House as are used in the case of the Governor. Motion seconded and carried.

Paragraph 8, Section I—*Miller* moved to insert the words "or person administering the office." Motion seconded and carried.

The Committee discussed the proposal of Dean Sommer in regard to paragraph 2, section IV [of the Article on the Executive], on such agencies as the Public Utilities Commission. It was considered that the proposed wording would allow the Legislature too much leeway in establishing the principal departments.

Miller moved to meet Dean Sommer's objection in part by deleting the words "and control." Motion seconded and carried.

Eggers moved to amend paragraph 3 of the Schedule to give the Governor power to establish the principal departments by executive order if the Legislature fails to take action by the specified time. Motion seconded. Discussion brought out the fact that such execu-

tive order would stand only until overridden by the Legislature, and that executive orders cannot repeal laws, which might be necessary in the process of allocation. Motion carried.

In regard to the militia, Colonel Walton reported on conferences which he had held with General Powell and Colonel McGowan.

After discussion, *Eggers* moved to substitute in paragraph 2 of the Schedule the words: "The taking effect of this Constitution shall not affect the commissions of any present militia officers, subject to the provisions of Section III, paragraph 1." Motion seconded.¹

After discussion, *Miller* suggested that the wording be more positive as follows: "Upon the adoption of this Constitution, officers of the militia shall retain their commissions, subject to the provisions of Section III, paragraph 1."

Smith moved to adopt this wording. Motion seconded and carried.

Smith moved to retain paragraph 2 of Section III [of the Article on the Executive] in the present draft, and to eliminate paragraph 3. Motion seconded and carried.

Senator Van Alstyne stated that he had requested the Committee on Rights and Privileges to include the militia in the paragraph on civil rights. The Committee had declined to do this, but had stated that they were going to recommend a broad phrase to prohibit discrimination on the grounds of race, color or national origin.

Barus moved that it be the sense of this Committee that this phrase would include the militia. Motion seconded and carried.

In regard to the recommendations of Attorney-General Van Riper on the county prosecutors, *Smith* moved to add the phrase "and until their successors are appointed and qualified."² Motion seconded and carried.

Barus moved to eliminate the last phrase about provision for removing the prosecutors, leaving them subject only to impeachment. Motion seconded and carried.

Miller raised the question whether prosecutors should be named in the Constitution at all.

Feller: No one at the hearings had objected to retaining the prosecutors.

Miller would prefer to have the prosecutors elected. *Walton* disagreed with this point of view.

Miller moved to eliminate coroners from paragraph 2, section II [of the Article on Public Officers and Employees]. Motion seconded and carried.

Miller read a letter from Judge Stickel urging that other constitutional officers be eliminated. There was no support for this idea, except from *Barus*. *Miller* stated that he would like to record his

¹ Section III, paragraph 1 of the Article on the Executive in the Committee's tentative draft.

² In section II, paragraph 1 of the Article on Public Officers and Employees in the Committee's tentative draft.

belief that these officers should be dealt with by legislation and not by the Constitution.

Chairman reported on three letters which he had received commending the Committee's draft, from Mr. Thomas McCarter, Mr. Lawrence J. McGregor, and Councilman William M. Auld.

Walton read a letter from Mr. Ralph Wescott recommending a change in the tense of the verbs in paragraph 8 and 9 of Section I [of the Article on the Executive]. To be consistent "shall have" should be used throughout. *Miller* moved to adopt these changes. Motioned seconded and carried.

Some of Dr. Reed's suggestions were then discussed. No action was taken on his recommendation about paragraph 8, Section I, or on paragraph 12, Section I.

Returning to the suggestion of Dean Sommer, *Miller* stated that one of the lawyers connected with the Public Utilities Commission had approved the Committee's clause with the words "and control" deleted.

Eggers moved to eliminate the words "for cause" in paragraph 3, Section IV [of the Article on the Executive], and also in paragraph 5. Motion seconded and carried.

Miller moved to eliminate paragraph 4 of Section IV, providing for a Cabinet. Motion seconded and carried.

Smith moved to adopt the suggestion of Dr. Reed about publishing regulations issued by administrative agencies. Motion seconded. After discussion, withdrawn.

Eggers moved to adopt the following: "Regulations and orders issued by administrative agencies shall be published pursuant to law before they shall become effective." Motion seconded and carried.

Miller moved that the Secretary be instructed to write to Dr. Reed and thank him for his helpful suggestions. Motion seconded and carried.

Smith moved that a similar letter be sent to Dr. Graham.

Miller read a clause from the New York Constitution dealing with administrative regulations. *Eggers* moved to substitute this wording for his former motion. Motion seconded and carried.

Feller suggested new wording of the Civil Service paragraph. No action taken.

Walton stated that he had received a memo from Dr. [Leon S.] Milmed suggesting that the Governor might appoint (with Senate confirmation) all members of boards and commissions within the principal departments. No action was taken on this, the Committee feeling that in many cases department chiefs should appoint their own subordinates.

The Committee then began final reconsideration of the entire draft. Page 5 was approved without change.¹

Page 6, paragraph 5, "of" in the second line was changed to "on"; "But" in the second sentence was eliminated and that sentence was changed to read: "No person who has been elected for two successive terms (including unexpired terms) as Governor shall again be eligible for that office, etc." *Miller* moved the approval of these changes. Motion seconded and carried.

In paragraph 6 "another" was changed to "a new" in the last line.

In paragraph 7, *Miller* suggested that an attempt be made at rewording to make it simpler.

In paragraph 8, first line, "has" was changed to "shall have" and also in the last line on the page. The words "or person administering the office" was inserted. Changes on this page were approved upon motion.

On page 7, *Barus* moved the adoption of a paragraph submitted by her as a proposal, giving the Governor power to seek court action to enforce compliance with the law. Motion seconded and carried. This was added as a separate paragraph. Page 7 approved as amended.²

On page 8, *Miller* moved to eliminate the last sentence of paragraph 12. Motion seconded and carried.

Miller suggested adding to the paragraph on pardon,³ a provision that no pardon shall be granted without public hearing and notice. *Walton* objected to this on the ground that it would prevent a man who had served his term and rehabilitated himself from seeking pardon. *Chairman* stated that he would rather see ten abuses of the pardon power than one man who had redeemed himself penalized. *Miller* stated that he wished to put on record the fact that this suggestion represents the judgment of the best experts in the field of penology.

Smith moved no change. Motion seconded and carried.

On page 10, *Miller* moved including the phrase "not less than ten nor more than twenty" in paragraph 1 of Section IV.⁴ Motion seconded and carried.

Barus moved to restore in this same paragraph the phrase about allocation of functions by major purposes. Motion seconded and carried. Page 10 was approved with these changes.⁵

Page 11 was approved with the elimination of the words "for cause" in paragraphs 3 and 5 [of Section IV]. The new paragraph

¹ Article on the Executive, Section I, paragraphs 1 to 4.

² Article on the Executive, Section I, paragraphs 9 to 11.

³ Article on the Executive, Section II, paragraph 1.

⁴ Article on the Executive.

⁵ Article on the Executive, Section III, paragraphs 1 to 3, and Section IV, paragraphs 1, 2 and part of 3.

on administrative orders was included. Page 11 was approved with these changes.¹

Page 12, a new paragraph on the State Auditor was added. *Smith* moved to add another fiscal officer. *Miller* stated that such an officer should be called the "Comptroller General." Motion withdrawn.

Walton moved that the Chairman be empowered to consult the Legislative Committee and state that unless they have some compelling reason for adding a second fiscal officer, this Committee will let the present clause stand. *Miller* suggested using the word "Comptroller" instead of "Auditor." Motion seconded and carried.

Paragraph 1, Section II [of the Article on Public Officers and Employees], approved with the change adopted above. Paragraph 2, approved with the elimination of the words "and coroners."

Mr. William Miller suggested changing the terms of these officers to even numbers of years so that they would be elected at general elections. This suggestion was not accepted, because of the terms of freeholders, who must be elected in odd years.

Page 12 was approved with these changes.²

Page 13, paragraph 2 of the Schedule was changed according to the motion recorded above.

On paragraph 3 of the Schedule, there was further discussion of the possibility of the Legislature's failing to act at the specified time.

Eggers moved to use the following words at the end of this paragraph: "If such allocation shall not have been completed within the time limited, the Governor shall call a special session of the Legislature to which he shall submit a plan or plans to complete such allocations; and no other matters shall be considered at such session." This motion was offered as a substitute for the former motion adopted. Motion seconded and carried.

On the Secretary of State, *Miller* moved to sustain the former action of the Committee. Motion seconded and carried.

Walton moved that the Chairman be empowered to draft the report of the Committee to go with its proposals, with the aid of the technician, the Secretary, the Vice-Chairman and any other members of the Committee whom he might designate. Motion seconded and carried.

Smith moved a vote of thanks to the Chairman for his able and impartial conduct of the deliberations of the Committee, and also to the Secretary and technician. Motion seconded and carried.

For the record, the Committee reported the fact that it had dealt with three Proposals from Convention delegates as follows:

No. 12 by Judge Carey, to give the Governor a four-year term but

¹ Article on the Executive, Section IV, paragraphs 3 (last part) to 5, and Article on Public Officers and Employees, Section I, paragraphs 1 and 2.

² Article on Public Officers and Employees, Section I, paragraphs 3 to 5, Section II, paragraphs 1 and 2, and Section III, paragraph 1.

forbid him to succeed himself—part of this was incorporated, and part rejected.

Proposal No. 35 by Mrs. Barus—incorporated in draft.

Proposal No. 38 by Spencer Miller, Jr., on the succession to the office of Governor in the case of a vacancy—rejected.

The meeting adjourned.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Thursday, July 31, 1947

(Executive session)

(Minutes)

On Thursday, July 31, 1947, the following members of the Committee met to work on the report to the Convention: Chairman Van Alstyne, Barus, Eggers, Feller, and Miller, S., Jr., and Mr. William Miller, the technician.

Several points were raised which this group considered and acted on, the Chairman voting by proxy for Senator Barton, and Mayor Eggers voting by proxy for Judge Hansen. Colonel Walton's vote was obtained by telephone:

1. The title of the Auditor was changed to "Auditor General." This change was also recommended to the Legislative Committee.

2. The words "not less than ten" referring to the number of principal departments were deleted.¹

3. In Section IV, paragraph 5 [of the Article on the Executive], the words "for cause," eliminated by vote of the Committee on July 30, were restored. This was done because the paragraph deals not only with state officers but with employees, many of whom would be under civil service. It was felt, therefore, that it was preferable to retain the words in this paragraph.

The Chairman reported that the Committee on the Legislative would not accept the suggestion about the Legislature's right of self-call by less than a majority of its members. He will present to the Committee the suggestion that they omit the exact words of the oath of office. The Legislative Committee agrees that a prohibition should be placed upon the President of the Senate or the Speaker of the House, so that they could not function as legislators if either succeeded to the Governorship.

Reporting on other points, the Chairman stated that the term "general election" has been defined by the Committee on Rights and Privileges, and that the Legislative Committee has added a Schedule which ties in the election of the Governor with that of members of the Legislature.

¹ Article on the Executive, Section IV, paragraph 1.

The Legislative Committee would not accept the term "Auditor General." Senator O'Mara suggested the elimination of the last phrase of Section IV, paragraph 2 [of the Article on the Executive], "and until their successors are elected and qualified." It was decided to take no action on this suggestion, since with an incoming Governor there might be a great turnover in department heads.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, August 5, 1947

(Executive session)

(Minutes)

A meeting of the Committee was held at 11:00 A.M., on Tuesday, August 5, 1947, in Room 109 in Rutgers Gymnasium.

Members present were; Chairman Van Alstyne, presiding, Barton, Barus, Farley, Feller, Hansen, Miller, S., Jr., Smith, J. S., Walton and Young.

The Secretary read the minutes of the July 31 meeting and they were approved.

Miller moved that the Committee ratify the action taken on July 31. Motion seconded and carried.

Chairman called attention to the fact that he and the technician had made a slight change in the provision for an automatic session of the Legislature to reconsider vetoed bills.

Barton asked whether the present department heads were protected in office by the Schedule. It was decided that the Schedule covered this point.

Smith moved that all members of the Committee sign the original report when it comes back from the printer. Motion seconded and carried.

Smith moved to adopt the following procedure for handling debate on the Committee's report: the Chairman should list the provisions which are likely to be controversial and assign various members of the Committee to speak on each. Motion seconded and carried.

The following assignments were accordingly made:

The Governor's right to succeed himself: *Miller, Eggers.*

The Governor's power to seek court action to enforce the law: *Barus, Miller.*

Declaration of vacancy in Governorship: *Van Alstyne.*

Two-thirds veto: *Feller.*

At this point there was discussion of the veto provision. Senator Farley moved that the Committee reconsider its action, and vote was taken, six members favoring the two-thirds majority, and four favoring a three-fifths majority.

Reduction of line items: *Van Alstyne, Farley.*

Extension of time to consider bills: *Walton.*

Elimination of pocket veto: *Farley, Young.*

Pardon and parole: *Barton, Miller.*

Militia: *Walton, Hansen.*

Limitation on number of departments: *Feller, Miller.*

Exceptions to single heads of departments: *Van Alstyne, Farley.*

Elimination of constitutional offices: *Farley, Feller, Young.*

Removal powers: *Walton, Hansen.*

Publication of administrative orders: *Smith, Miller.*

Civil service: *Barus, Feller.*

At this point, Mrs. Streeter asked to be heard and proposed that the Committee might limit veterans' preferences to disabled men and to the wives of men killed in service. The Committee felt that no change could be made in this paragraph because of existing laws.

Chairman Van Alstyne thanked the Committee for their hard work and constructive efforts. Meeting adjourned.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Tuesday, August 12, 1947

(Executive session)

(Minutes)

A meeting of the Committee on the Executive, Militia and Civil Officers was held during the noon recess of the Convention on August 12, 1947.

Members present were Chairman Van Alstyne, presiding, Barton, Barus, Farley, Feller, Miller, S., Jr., and Walton.

There was a motion to incorporate Justice Brogan's proposal to amend paragraph 4, Section IV,¹ by adding at the end of this paragraph the following:

"Such officer or employee shall have the right of judicial review, on both the law and the facts, in such manner as shall be provided by law."

Motion seconded and carried.

The Committee then took up paragraph 7, Section I [of the Article on the Executive], on the method of filling a vacancy in the office of Governor. After a long discussion it was decided that the paragraph was satisfactory as it stood and that no change was necessary.

In order to conform to the action taken by the Convention in reestablishing the Attorney-General and the Secretary of State as constitutional officers, it was moved to amend paragraph 1, Section IV [of the Article on the Executive], by inserting after the word "Government" the words "including the Secretary of State and the Attorney-General." Motion seconded and carried.

It was also moved to amend the same section, paragraph 2, by inserting after the word "qualified" the words "; except as herein otherwise provided with respect to the Secretary of the State and the Attorney-General." Motion seconded and carried.

There was then a discussion of the effect of the action of the Convention on the terms of present state officers. It was moved to add Senator Barton's amendment to the end of paragraph 2 of the Schedule as follows:

"Unless otherwise specifically provided for in this Constitution, all constitutional officers in office at the time of the adoption of this Constitution

¹ Paragraph 5, Section IV, Article on the Executive, in the Committee's printed tentative draft.

shall continue to exercise the authority of their respective offices during the term for which they have been elected or appointed and until their successors have been qualified."

Motion seconded and carried. Meeting adjourned.

Respectfully submitted,

JANE E. BARUS, *Secretary*

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON THE EXECUTIVE, MILITIA
AND CIVIL OFFICERS

Monday, September 8, 1947

(Executive session)

(Minutes)

A special meeting of the Committee was called by Chairman Van Alstyne on Monday, September 8, 1947 at the Constitutional Convention at 2:23 P.M. to consider a series of proposed verbal changes in the Executive Article.

The following members were present: Chairman Van Alstyne, presiding, Eggers, Farley, Feller, Miller, S., Jr., Smith, J. S., Walton and Young.

Members absent: Barton, Barus and Hansen.

Spencer Miller, Jr. was appointed Acting Secretary.

(1) The first proposal to be considered was a clarification of the veto by the Governor in an adjournment *sine die*, as outlined in Article V, Section I, paragraph (b), page 11.

The proposed change was as follows:

Line 21—insert "*sine die*" after the word "adjournment." Line 22 remove period and insert comma after the word "taken" and add new clause—"in which event any bill not signed by the Governor within such 45-day period shall not become law."

A general discussion by the members developed the value of clarifying the position of the Governor in a possible pocket veto within the 45-day period after adjournment *sine die*. Mr. William Miller, the technician, expressed the opinion that such clarification was not needed though it could do no harm. Others pointed out that such clarification might be useful.

It was agreed that it would be unwise to raise this question in behalf of the Committee on the floor as it was not agreed that it was a necessary change.

It was moved by *Walton* and duly resolved that if the Committee on Arrangement and Form desired to insert this change, that the Committee interpose no objection on the floor.

(2) The second proposal concerned the deletion of the words "and treason" in Article V, Section II, paragraph 1.

After a brief discussion, *Walton* pointed out that the crime of treason was so heinous that no Governor should be permitted to

pardon one guilty of treason; that the proper relief was by joint legislative action. It was further pointed out that this matter had been considered earlier by the Committee and it was decided that treason and impeachment had been included in the limitation of the Governor's pardoning power.

It was agreed without formal motion that the position of the Committee as originally adopted be adhered to.

(3) The third proposal concerned the term of office of the Secretary of State and the Attorney-General, as set out in Article V, Section IV, paragraph 3.

The proposed change was the addition to paragraph 3 of the words, "and until the appointment and qualification of their successors."

A general discussion followed. It was reported that Attorney-General Van Riper had indicated the importance of the post of Secretary of State and the necessity for his certification to records during the period of inauguration. For that reason his term of office should continue until his successor qualified.

To meet this need it was suggested that the Secretary of State remain in office two weeks after the new Governor assumed office so there would be no interruption. On the other hand, it was pointed out that the Acting Secretary of State could function in the absence of a Secretary of State.

It was generally agreed that such a change might be considered substantive and raise questions from the floor. On further consideration it was thought wise to have the Secretary of State's term run concurrently with that of the Governor as originally intended.

It was agreed without formal motion to leave the wording unchanged.

(4) The fourth proposal concerned the wording of the civil service clause in Article VII, Section I, paragraph 2, page 16, under Public Officers and Employees.

It was asserted by several members of the Committee that Delegate Gene W. Miller felt that the clause as written seemed to limit the home rule principle in the merit system.

A discussion followed in which it was pointed out that if by referendum civil service is adopted, by referendum it should be repealed. Others pointed out that to change the wording now would seem to weaken the civil service guarantees. This would be unwise.

After weighing the *pros* and *cons* it was moved and duly resolved that the language should be unchanged.

The meeting then adjourned at 2:55 P.M.

Respectfully submitted,

SPENCER MILLER, JR., *Acting Secretary*

COMMITTEE
ON
THE EXECUTIVE,
MILITIA
AND
CIVIL OFFICERS

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 ARTICLES ON EXECUTIVE AND ADMINISTRATIVE
AND ON PUBLIC OFFICERS)

SUMMARY AND EXPLANATION

* * * *

ARTICLE IV

EXECUTIVE AND ADMINISTRATIVE

Summary:

1. The Governor shall serve for four years, starting the fifteenth of December after his election.
2. The Governor shall be eligible to hold office for only one term.
3. The heads of all administrative departments, except the Treasurer and the Comptroller, shall be appointed by the Governor with the advice and consent of the Senate.
4. Unless the Senate confirms or rejects an appointment by the Governor within thirty days, the appointment shall be deemed confirmed.
5. The heads of all administrative departments shall serve at the pleasure of the Governor.
6. All administrative and executive offices, boards, bureaus, commissions and departments of the State government shall be placed by the Governor within nine administrative departments as follows: Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance.
7. The functions, powers and duties of executive and administrative offices and agencies may be reallocated by the Governor within and among the nine civil departments, but the Legislature may veto any executive order of allocation within thirty days after the order is transmitted to both houses.
8. The Governor shall have the right to remove all State officials, except members of the Legislature, officers elected or appointed by the Legislature and judicial officers, for misfeasance or malfeasance in office after a public hearing.
9. Three days shall elapse between the veto of any legislative act and reconsideration by either house of the Legislature. The Governor's veto of any item in an appropriation bill shall require

a two-thirds vote of each house of the Legislature for passage over the veto.

10. The power to pardon and commute sentences, after conviction, is vested in the Governor. A commission on parole, appointed by the Governor, shall have State-wide jurisdiction to grant paroles and supervise parolees. The commission shall also make recommendations to the Governor upon applications for executive clemency.

11. The militia remains under the Governor with an Adjutant-General to serve at his pleasure. All officers shall be commissioned by the Governor after selection upon a merit basis according to Federal standards.

Explanation:

The functions of modern executives in all forms of business organization contrast sharply with the office of Governor of New Jersey, who can be an executive in name only. Hampered by whimsical laws and inadequate constitutional authority, the Governor of New Jersey suffers as an executive from the multiplicity of offices, commissions, boards, bureaus, and other agencies, and from lack of authority to control his most important departments. Our greatest need, to which the revision is directed, is to strengthen the executive authority.

This has been achieved by redefining the role of the executive as head of the administrative organization, by making possible the simplification of the subordinate administrative structure and by clarifying the relationship of the Governor to the Legislature.

As chief executive officer, the Governor is responsible for the efficient, orderly, and co-ordinate conduct of governmental business. The extent of his accountability depends upon his power to obtain from all of his subordinates an adequate performance of their duties. This in turn means that these subordinates must be rendered accountable to him. Under the existing constitution, the Attorney-General, Secretary of State and keeper of the State prison are given five-year terms which place them outside the line of executive control. In addition to these officials, numerous state officers, boards and commissions have been established without any concerted plan of synchronizing their terms of office, their appointment to office, or their functions within a properly co-ordinated and responsible executive department. The result is that the office of Governor has been deprived of real managerial functions and executive responsibility has been scattered among executive agencies created and filled by legislative authority.

The first remedy for this situation is supplied by providing for the nomination and appointment of the heads of all administrative departments by the Governor with the advice and consent of the

Senate. The hand of the Governor is strengthened in this respect by a provision requiring senatorial action within thirty days on such nominations as the Governor may make. Only the State Treasurer and the Comptroller remain legislative offices, in the sense of appointment and responsibility, in order to give the Legislature a check upon the expenditure of appropriations which it has authorized. By fixing the term of all such department heads to coincide with that of the Governor, and by authorizing their removal at his pleasure, the Governor is appropriately granted the power essential to secure smooth-running state government.

The second remedy is provided in administrative organization. Provision is made for the allocation of all executive and administrative offices together with their powers, duties and functions, within nine major departments. The responsibility to achieve this allocation by executive order is placed upon the Governor. Any reallocation of functions, however, is made subject to veto by the Legislature within thirty days. Such a reorganization will bring into a compact administrative organization more than ninety agencies at present performing administrative functions. No constitutional allocation is attempted because of the special treatment demanded by the variety in type, size, term, and duties of these agencies. By combining administrative activities into nine departments, there will be created a responsible and accountable corps of administrative officers to function as a gubernatorial cabinet. In order to allow for situations where a plural executive has proved advantageous, the Legislature is authorized to make an exception to the general requirement of a single executive at the head of each administrative department. The Governor is thus provided with the means of securing control over administrative activity. His program can be planned in consultation with his chief administrative assistants, and his policies can be carried out under his supervision. Within the field of administration, duplication of effort can thus be eliminated, conflicting spheres of action can be avoided and purposes co-ordinated.

The principle of strengthening the executive does not occasion a corresponding weakening of the Legislature. When the Governor is made a powerful and responsible head in his own sphere of administration, the Legislature can be relieved of executive functions and its attention confined solely to legislation. The relation of the Governor to the Legislature is thus defined more clearly by retaining each branch in its own sphere and preserving the traditional checks and balances. Only in connection with budgetary matters is this relationship altered in the proposed revision. The item veto over appropriation bills, now possessed by the Governor as the responsible budgetary officer, is strengthened by requiring a two-thirds vote in the Legislature before it may be overridden.

It is not in the best interest of the state to give the Governor power to dominate the Legislature through any other increase in the veto power. For the same reason, the opportunity for political control over the Legislature is minimized by the provision that hereafter no Governor may serve more than one term. This limitation on the Governor's term eliminates the possibility of a Governor perpetuating himself in office through the creation of a strong political machine. On the other hand, the Governor's term of office is lengthened to four years in order to provide him with ample opportunity to carry out his program.

* * * *

ARTICLE VI PUBLIC OFFICERS

Summary:

1. The merit system of appointment and promotion in civil service, with uniform salaries for similar work, shall be compulsory.
2. Benefits payable to employees under State pension and retirement funds shall be a contractual obligation on the part of the State.
3. In any official investigation, every public officer or employee must answer all questions relating to his conduct in office. If he refuses to answer, or to waive immunity from prosecution with respect to any matter upon which he may testify, he shall immediately be removed from office.
4. Sheriffs may hereafter succeed themselves in office.

Explanation:

In this article are collected all of the provisions relating generally to public officers and employees, as distinguished from those provisions which are peculiar to, and may be found within, the legislative, executive or judicial articles.

The new provision which gives constitutional status to the merit system in public service will have threefold effect: first, it will complement the executive article in that the Governor's extensive powers are tempered by restricting appointments of the great mass of public employees to a merit basis; secondly, it will eliminate an existing cause of great dissatisfaction amongst employees in the State service by requiring a complete job analysis and classification and the establishment of uniform pay for similar work, regardless of department; thirdly, it will encourage the Legislature to bring more county and municipal employees into the State Civil Service system wherever that is practical. The latter effect has, at least, been observed in the State of New York.

The rights of public employees are also stabilized by the section

giving contractual status to benefits in State pension funds. The State has always recognized its moral obligation in this respect and 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 is in no way affected. For the sake of prudence, of course, the State pension funds should be continued on a sound actuarial basis.

Many municipal pension funds are not now on such a basis and they never can achieve it at a reasonable cost because they are too small. Pension funds, like insurance, really spread the risk—in this case, of economic life expiring before natural life—among all the participants in the fund. It follows that the greater the number of sound risks included in a fund, the broader is its actuarial basis. For this reason municipalities and counties are permitted by law to join the State Employees' Retirement System on an actuarial basis. Thus far only Bergen and Ocean counties, the boroughs of Butler, Mantoloking, North Arlington and Princeton and Teaneck township have availed themselves of this valuable privilege. The new assurance that State funds confer benefits that can never be impaired whereas local funds must face the possibility of being unable to meet promised benefits, will tend to accelerate participation in the State plan. As this result is achieved, realization of the public desire for sound pension systems at reasonable cost will finally have been effected.

Strengthening of the legislative power of investigation, on the other hand, will directly result in improved accountability of public officers and employees for the faithful performance of their trust. The new provision on this subject requires any public officer who may be called upon to testify with respect to his official duties to answer all legitimate questions and either to waive his privilege against self-incrimination or lose his privilege of continuing in the public service.

Since the reason for originally prohibiting sheriffs from succeeding themselves—that is, their former extensive powers—has long since disappeared, this restriction is removed from the constitution.

TEXT OF PROPOSED CONSTITUTION

* * * *

ARTICLE IV

EXECUTIVE AND ADMINISTRATIVE

SECTION I

Executive Office

1. The executive power shall be vested in a Governor.
2. The Governor shall be elected in odd-numbered years by the

legally qualified voters of this State. The person receiving the greatest number of valid votes shall be the Governor; but if an equal and greatest number of votes are received by more than one candidate, one of such candidates shall be chosen Governor by the votes of a majority of the members of both houses of the Legislature in joint meeting. Contested elections for the office of Governor shall be determined in such manner as may be provided by law.

3. The Governor shall serve for a term of four years, beginning on the fifteenth day of December next following his election, and no person hereafter elected shall be eligible for more than one term.

4. The Governor shall be not less than thirty years of age, and shall have been for twenty years at least a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State.

5. No member of Congress, or person holding an office under the United States, or this State, shall exercise the office of Governor except during his temporary absence from the State or temporary disability as specifically provided in this constitution; and in case the Governor, or person administering the government, shall accept any office under the United States or this State, his office of Governor shall thereupon be vacant. Nor shall he be elected by the Legislature to any office under the government of this State or of the United States during the term for which he shall have been elected Governor.

6. In case of impeachment of the Governor, his absence from the State, or temporary inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve to the head of the Department of Taxation and Finance until such time as the Governor shall be acquitted, or shall return to the State, or the temporary inability shall cease. In case of any vacancy in the office of Governor caused by death or removal of the Governor, by death or resignation of the Governor-elect, or his failure to qualify, or from any other cause, the powers, duties and emoluments of the office shall devolve to the head of the Department of Taxation and Finance who shall serve until a new Governor shall have been elected and qualified. The new Governor shall be elected, in the manner provided by this constitution, at the next general election to be held, in an odd-numbered year, not less than ninety days after the occurrence of the vacancy.

SECTION II

General

1. The Governor shall take care that the laws be faithfully executed, convene the Legislature or the Senate alone whenever, in his opinion, public necessity so requires, communicate a message to the

Legislature relating to the condition of the State at the opening of each session and at such other times and with respect to such legislative measures or other public matters as he may deem in the public interest. He shall be commander-in-chief of all the military and naval forces of the State, and shall grant, under the great seal of the State, commissions to all civil and military officers elected or appointed pursuant to requirements of this constitution. The Governor shall also nominate and appoint, by and with the advice and consent of the Senate, all officers so subject to appointment by this constitution and all other officers whose election or appointment is not otherwise provided for by law.

2. The Senate shall either confirm or reject the Governor's nominations for appointive offices within thirty days after they are submitted. If the Senate fails to act upon a nomination, the nominee shall be deemed confirmed at the expiration of thirty days from the date of submission of his name by the Governor. But the Governor shall make no nominations to the Senate during the last month of his term.

3. Every bill which shall have passed both houses shall be submitted to the Governor for approval. If the Governor shall approve, he shall sign the bill and it shall thereupon become a law. If any bill submitted to the Governor shall contain one or more items of appropriation of money, he may approve and sign the bill, but may specially disapprove by a written statement appended thereto of one or more of such items, and the items so disapproved shall not take effect. If the Governor shall disapprove a bill, or an item or items of appropriation which may be contained therein, he shall return it, with a written statement of his objections, to the house in which the bill originated. The Governor's objections shall be entered at large in the journal of the proceedings of that house and a copy thereof shall be sent to the other house.

4. Any bill shall become a law notwithstanding disapproval by the Governor if, upon reconsideration on or after the third day following return thereof to the house of origin, it shall receive the affirmative votes of a majority of the membership of each house of the Legislature, except that a supplementary appropriation bill may so become a law only by the affirmative votes of two-thirds such membership. Any item of appropriation specially disapproved by the Governor shall become effective notwithstanding such disapproval if, upon being separately reconsidered on or after the third day following return of the bill in which it is contained to the house of origin, it shall receive the affirmative votes of two-thirds of the membership of each house of the Legislature.

The vote taken upon reconsideration of any bill or item of appropriation after disapproval by the Governor shall be by yeas and nays

and there shall be entered upon the journal of each house, respectively, the names of the members voting for and against.

5. At noon, on the seventh day, Sundays excepted, following the date of submission of any bill to the Governor, if he shall not prior thereto have returned it to the house of origin, the bill shall become a law with like effect as if he had signed it. If the Legislature shall by adjournment prevent return of a bill within seven days as aforesaid, the bill shall not become a law unless the Governor shall sign it within twenty days after such adjournment.

6. The Governor may, upon complaint submitted to him by at least twenty reputable citizens, cause an investigation to be made of the conduct in office of any State officer, except a member of the Legislature, an officer appointed or elected by the Legislature or a judicial officer. The Governor may remove any such officer after notice and an opportunity to be heard, whenever, in his opinion, such investigation discloses misfeasance or malfeasance in office.

7. The Governor may grant pardons and commute sentences after receiving recommendations of the parole commission established by this article. He may also suspend the collection of fines and forfeitures and may grant reprieves which may not extend beyond ninety days after conviction; but neither these powers nor the pardoning power shall apply to cases of impeachment.

SECTION III

Administration

1. There shall be nine administrative departments in the State government designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance, which shall be under the supervision and control of the Governor, and a State Treasurer and a State Comptroller who shall be appointed by and be responsible to the Legislature. The Governor shall, by executive order, from time to time allocate all executive and administrative offices, agencies and instrumentalities of the State government among and within the foregoing departments and offices.

2. Executive and administrative functions, powers and duties in the State government as authorized by law shall from time to time be allocated by the Governor, by executive order, among and within the departments and offices prescribed by this constitution in such manner as to promote efficiency and economy in the operation of the State government, and to group, co-ordinate and consolidate the offices, agencies and instrumentalities thereof according to major purposes, as nearly as may be. No executive order shall, however, allocate functions, powers and duties of receipt and disbursement of public moneys other than to the State Treasurer, nor of accounting, audit and control other than to the State Comptroller.

3. Any executive order which allocates or reallocates functions, powers or duties pursuant to paragraph two of this section shall be transmitted by the Governor to each house of the Legislature while it is in regular or special session. Such order shall take effect in accordance with its terms, provided that it has been before the Legislature for thirty calendar days and prior to the expiration thereof the Legislature has not, by concurrent resolution, disapproved of the order. In the event of such disapproval, the order shall be void and of no effect. Limitations imposed by this constitution upon the duration of regular and special sessions of the Legislature shall, solely for the purposes of this paragraph, be suspended to allow consideration of an executive order, but not exceeding thirty calendar days in any event.

4. The heads of all administrative departments shall comprise a single executive, unless otherwise provided by law. All such department heads and the members of all boards, councils and commissions, except the State Comptroller and the State Treasurer, shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate.

5. The heads of all administrative departments shall serve during the term of the Governor appointing them, at his pleasure, and until their successors have been appointed and qualified.

6. The State Comptroller and the State Treasurer shall be appointed by the Senate and General Assembly in joint meeting. They shall hold their offices, respectively, for four years. The Governor may, whenever in his opinion it would be in the public interest, require from the Comptroller or the Treasurer written statements under oath of information on any matter relating to the conduct of their respective offices.

7. The Governor and the heads of executive and administrative departments of the State government shall, at stated times, receive for their services such compensation as may be fixed by law which shall be neither increased nor diminished during their respective terms.

8. Appointive officers and employees of the State government shall receive no compensation for their public services in addition to such annual salary as may be fixed by law. Any other moneys or fees received by any such officer or employee by virtue of or in connection with his office or position, except as reimbursement for expenses actually incurred in the course of his public duties, shall be forthwith paid into the State treasury.

9. No rule or regulation made by any executive or administrative agency of the State government except such as relates to the organization or internal management of an executive or administrative agency of the State government shall be effective until it is filed with

the Secretary of State. The Legislature shall provide by law for the speedy publication of such rules and regulations.

SECTION IV

Militia

1. The Legislature shall provide by law for enrolling, organizing and arming the militia, of which the Governor shall be commander-in-chief.

2. An Adjutant-General, who shall be chief of staff of the militia with the rank of Major-General, shall be nominated and appointed by the Governor with the advice and consent of the Senate. The Adjutant-General shall serve at the pleasure of the Governor.

3. Officers of the militia shall be appointed and commissioned by the Governor according to merit and fitness which shall be determined in such manner and upon such standards as now are or hereafter may be applied by the War Department of the United States for officers of equivalent rank.

4. No commissioned officer shall be removed from office other than by sentence of a court martial, or by a board constituted and empowered by law, except that all general officers may be suspended for cause by the Governor.

SECTION V

Parole Commission

1. There shall be a Commission on Parole in the executive branch of the government. The commission shall comprise three members, at least one of whom shall be a member of the bar of this State, who shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate. Members of the commission shall hold office for a term of four years, but of those first appointed one shall be appointed for a term of two years, one for four years and one for six years. Members of the commission may be removed by the Governor, for cause upon notice and hearing, prior to the expiration of their respective terms. They shall receive such fixed annual compensation for their services as may be provided by law.

2. The Commission on Parole shall grant parolees, as may be provided by law. The commission may remit fines and forfeitures and shall make recommendations to the Governor upon applications for executive clemency after conviction, in all cases except impeachments.

3. The Commission on Parole shall meet at stated times, and all hearings and proceedings of the commission shall be public. Every order of the commission remitting, reducing or affecting any fine, forfeiture or sentence, recommending or disapproving any application for executive clemency, with the reasons set forth at length, shall be filed with the clerk of the Supreme Court at least ten days before it may become effective, and shall constitute a public record.

* * * *

ARTICLE VI
PUBLIC OFFICERS

SECTION I

Generally

1. Every appointive officer of the State government shall, before entering 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, impartially and justly to perform the duties of his office to the best of his ability.

2. In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions 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.

3. The Legislature or either house thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. No person shall be privileged from testifying in relation to any such matters and upon so testifying he shall be immune from criminal prosecution with respect to any matter to which such testimony may relate. Any public officer or employee who shall refuse or willfully fail to obey any subpoena lawfully issued by such investigating committee, officer or agency, or who shall refuse to testify or to answer any questions relating to any matter properly under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to continue in his office, position or employment, which shall forthwith be deemed vacant. Any such person shall not thereafter be eligible for any public office, position or employment.

4. County clerks and surrogates shall be elected by the people of their respective counties at a general election. They shall hold office for a term of five years. Whenever a vacancy occurs in the office of clerk or surrogate of any county, the Governor shall fill such vacancy by appointment for a term to expire when a successor is elected and qualified.

5. Sheriffs and coroners shall be elected by the people of their respective counties at a general election. They shall hold office for a term of three years.

6. After July first, one thousand nine hundred and forty-three, 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.

7. All civil officers elected or appointed pursuant to the provisions of this constitution shall be commissioned by the Governor.

8. The term of office of all officers elected or appointed pursuant to the provisions of this constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

SECTION II

Impeachments

1. The Governor and all other civil officers of the State government shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

2. The House of Assembly shall have the sole power of impeaching by a vote of a majority of all the members. Except as otherwise provided by this constitution with respect to judicial officers, all such impeachments shall be tried by the Senate, and members, when sitting for that purpose, shall be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence;" and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate. The presiding officer, respectively, of each house of the Legislature may call it into session for the purpose of impeachment proceedings.

3. Judgment in cases of impeachment shall not extend farther than to removal from office, and to disqualification to hold and enjoy any office of honor, profit or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law.

* * * *

ARTICLE XI

SCHEDULE

* * * *

SECTION III

Executive

1. On or before July first, one thousand nine hundred and forty-three, the Governor shall complete the first allocation of executive and administrative agencies, offices and instrumentalities of the State government within and among the departments and offices required by this constitution. Prior to such allocation, each agency, office, and instrumentality shall continue to function as heretofore, except as may be otherwise provided by law.

2. Appropriation balances, personnel, property and records may be transferred as need appears by provision in any executive order allocating executive or administrative agencies, offices or instrumentalities, or their functions, powers and duties.

3. In case of death, resignation, removal or disability of the Governor or of his absence from the State prior to his appointment of the heads of civil departments required by this constitution, all the powers, duties and emoluments of the office shall, as heretofore, devolve upon the President of the Senate and the Speaker of the House of Assembly, in that order.

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 ARTICLES ON EXECUTIVE AND ON PUBLIC OFFICERS AND EMPLOYEES)

* * * *

ARTICLE IV**EXECUTIVE****SECTION I**

1. The executive power shall be vested in a Governor.

2. The Governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State.

3. No member of Congress or person holding any Federal or State office, or position, of profit shall exercise the office of Governor; and if the Governor shall become a member of Congress or shall accept any Federal or State office, or position, of profit, his office of Governor shall thereupon be vacant. No Governor shall be elected or appointed by the Legislature to any office during the term for which he shall have been elected Governor.

4. The Governor shall be elected by the legally qualified voters of this State. The person having the highest number of votes shall be the Governor; but if two or more shall be equal and highest in votes, one of them shall be elected Governor by the vote of a majority of the members of both houses in joint meeting at the regular legislative session next following the election for Governor by the people. Contested elections for the office of Governor shall be determined in such manner as may be provided by law.

5. A Governor elected for a full term shall hold his office for four years beginning at noon on the second Tuesday of January next following the election for Governor by the people and ending at noon on the second Tuesday of January four years thereafter. The Governor, when elected for any full term, shall be incapable of holding the office again until the second Tuesday of January in the fourth year after the expiration of the term.

6. In case of the death of the Governor-elect before he is qualified into office, in case of the death, resignation or removal from office of the Governor or in case of a vacancy in the office for any other cause, the powers, duties and emoluments of the office shall devolve upon the President of the Senate, and in case of his death, resignation or removal, then upon the Speaker of the General Assembly for the time being, until a Governor be elected and qualified.

7. In case of the impeachment of the Governor, his absence from the State or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the President of the Senate, and in case of his death, resignation or removal, then upon the Speaker of the General Assembly for the time being, until the Governor impeached or absent shall be acquitted or shall return or the inability shall cease, or until a Governor be elected and qualified.

8. In case of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the next general election succeeding the vacancy unless the vacancy shall occur within sixty days immediately preceding a general election in which case he shall be elected at the second succeeding general election; but no election to fill an unexpired term shall be held in any year in which a Governor is to be elected for a full term. A Governor elected for an unexpired term may assume his office as soon as his election has been determined.

9. The Governor shall, at stated times, receive for his services a salary, which shall be neither increased nor diminished during the period for which he shall have been elected.

10. He shall be the commander-in-chief of the militia and all the military and naval forces of the State; he shall communicate by message to the Legislature at the opening of each regular session, and at such other times as he may deem necessary, the condition of the State, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant commissions to all officers elected or appointed pursuant to the provisions of this Constitution. All officers whose election or appointment shall not otherwise be provided for by this Constitution or by law shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. No vacancy in any office which is to be filled by the Governor with the advice and consent of the Senate or by the Senate and General Assembly in joint meeting may be filled by the Governor by a temporary or ad interim appointment at any time, except as may be provided by law.

11. The Senate shall either confirm or reject each nomination to office within a period of six weeks after the same has been submitted to it by the Governor unless within that period the nomination is withdrawn by the Governor or returned to the Governor by the Senate; and any nomination not rejected, withdrawn or returned within the period shall be deemed confirmed at the expiration of the period. The withdrawal or return of a nomination before its confirmation shall render it of no effect. No appointment or nomination shall be made by the Governor during the last week of his term.

12. Every bill which shall have passed both houses shall be presented to the Governor; if he approve he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it; if, upon reconsideration on or after the third day following its return, three-fifths of all the members of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered and if approved of by three-fifths of all the members of that house, it shall become a law; and in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days, Sundays excepted, after it shall have been presented to him, the same shall become a law on the tenth day if the house of origin is not in adjournment on said day. If, on said tenth day, the house of origin is in adjournment in the course of a regular or special session, the bill shall become a law on the day on which the house of origin convenes after the adjournment unless the Governor shall return the bill to that house on that day. If, on said tenth day, the legislature is in adjournment *sine die*, the Governor shall within thirty-five days after such adjournment sign the bill or return it to the house of origin at a special session of the Legislature called by him, to meet within the thirty-five days, for reconsideration of bills; otherwise, the bill shall become a law on said thirty-fifth day. If the Governor shall return any bill to the house of origin less than three days prior to the adjournment *sine die* of any session, the bill shall become a law thirty-five days after said adjournment unless the Governor shall call a special session of the Legislature, to meet within said thirty-five days, for reconsideration of bills, and in such case such bill may be reconsidered.

13. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object to one or more of such items while approving of the other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of each item to which he objects, and each item so objected to shall not take effect. A copy of such statement shall be transmitted by him to the house in which the bill originated, and each item objected to shall be separately reconsidered. If, upon reconsideration on or after the third day following said transmittal, one or more of such items be approved by three-fifths of all the members of each house, the same shall become a part of the law, notwithstanding the objections of the Governor. All the provisions of the preceding paragraph in relation to bills not approved by the Governor shall apply to cases in which he shall withhold his approval from

any item or items contained in a bill appropriating money.

14. The Governor may cause an investigation to be made of the conduct in office of any State officer except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting or a judicial officer. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office. Upon application on behalf of the Governor or officer under investigation or subject to charges, a Justice of the Superior Court may issue subpoenas and, under penalty of contempt of the Superior Court, may compel the attendance of witnesses, the giving of testimony, and the production of books and papers, in the investigation or at the hearing.

SECTION II

1. There shall be a board of pardons in the executive branch of the government, which shall consist of the Governor, or person administering the government, and of four other members who shall be nominated and appointed by the Governor by and with the advice and consent of the Senate for terms of four years and until their successors are qualified into office and who shall receive such annual salaries for their services as may be provided by law. At least one of said four members shall be an attorney-at-law of this State.

2. The board of pardons, by a majority of all its members of which majority the Governor, or person administering the government, shall be one, may grant pardons, after conviction, in all cases except impeachment. The board of pardons, by a majority of all its members, may remit fines and forfeitures and suspend the collection of the same, but in proceeding as to these matters the Governor, or person administering the government, need not participate.

3. The board of pardons shall have no power to grant paroles except as provided by law.

4. The Governor, or person administering the government, shall have the power to grant reprieves except in cases of impeachment.

SECTION III

1. There shall be Principal Departments in the State Government, not more than twenty in number, created by the Governor by executive order; and among and within them shall be allocated by the Governor by executive order all the executive and administrative offices, departments and instrumentalities of the State Government, in such manner as to group the same according to major purposes.

2. The Governor by executive order from time to time may reorganize, merge, consolidate and divide offices, departments, instrumentalities and the Principal Departments, and may allocate and reallocate them, in whole or in part, and the functions, powers and

duties of any of them among and within such offices, departments and instrumentalities and the Principal Departments, all in such manner as to promote efficiency and economy in the operation of the State Government.

3. The Governor in any executive order made under the preceding paragraphs of this Section may make provision to effect the purposes of said order, including the transfer of personnel, property and appropriation balances, and the abolition and creation, within the limits of available appropriations, of executive and administrative offices, positions and employments; provided, that no person shall be deprived of any right or privilege which may be accorded him by civil service law.

4. Every such executive order shall be transmitted by the Governor to each house of the Legislature at a regular or special session and shall become effective six weeks after its transmittal unless within the six weeks both houses of the Legislature shall approve or disapprove the same by resolution. If so approved the order shall become effective upon approval; and if so disapproved it shall have no effect.

5. Such executive order shall remain unaltered and in full force except as may be provided by subsequent executive orders. The Legislature, however, may by law from time to time assign new functions, powers and duties to, and may increase or diminish the functions, powers and duties of, any office, department or instrumentality or Principal Department.

6. The Principal Departments shall be under the supervision and control of the Governor. The head of each Principal Department shall be a single executive unless otherwise provided by law; and all such single executives shall be nominated and appointed by the Governor with the advice and consent of the Senate and shall hold their offices until the next Governor shall be elected and qualified and until their successors shall be appointed and qualified, but they may be removed by the Governor as shall be provided by law.

7. Whenever a board, commission or other body shall be the head of a Principal Department, the members thereof shall be appointed by the Governor with the advice and consent of the Senate, and if said board, commission or other body shall have power to appoint an administrator, director or other chief executive, such appointment shall be made with the approval of the Governor.

8. The Governor may from time to time appoint such State officers as he may select, to serve at his pleasure as the members of his Cabinet with whom he may consult relative to the affairs of the State.

9. No executive order under this section shall affect any officer elected by the Senate and General Assembly in joint meeting or his

office or the functions, powers or duties thereof which may be provided by law.

* * * *

ARTICLE VI

PUBLIC OFFICERS AND EMPLOYEES

SECTION I

1. Every appointive State officer shall, before entering 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 to perform the duties of his office faithfully, impartially and justly to the best of his ability.

2. In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions 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; except that preference in the appointment of persons who have been or shall have been in active service in any branch of the military or naval forces of the United States in time of war may be created by law.

3. Any compensation for services or any fees received by any person by virtue of his appointive State office or position, in addition to the annual salary provided therefor, shall be forthwith paid by him into the State Treasury, unless the compensation or fees be allowed or appropriated to him by the Legislature.

4. Any person before entering upon the duties of, or while holding, any public office, position or employment in this State may be required to give bond, as may be provided by law.

5. The term of office of all officers elected or appointed pursuant to the provisions of this Constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

SECTION II

1. The State Comptroller, the State Treasurer and the State Auditor shall be elected by the Senate and General Assembly in joint meeting for terms of four years and until their successors shall be qualified into office. The Governor may, whenever in his opinion it would be in the public interest, require from them written statements, under oath, of information on any matter relating to the conduct of their respective offices.

2. Prosecutors of the pleas shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. They shall hold their offices for terms of five years.

3. County clerks, surrogates, sheriffs and coroners shall be elected by the people of their respective counties at general elections. County clerks and surrogates shall hold office for terms of five years. Sheriffs and coroners shall hold office for terms of three years. Whenever a vacancy occurs in the office of county clerk, surrogate, sheriff or coroner in any county, it shall be filled in such manner as may be provided by law.

SECTION III

1. The Legislature may by concurrent resolution and either house thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. No person shall be privileged from testifying in relation to any such matters, and upon so testifying he shall be immune from criminal prosecution with respect to any matter to which such testimony may relate unless he has waived such immunity. Any person holding public office, position or employment who shall refuse or willfully fail to obey any subpoena lawfully issued by such investigating committee, officer or agency, or who shall refuse to testify or to answer any questions relating to any matter under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to continue in his office, position or employment, which shall forthwith be deemed vacant and he shall be ineligible to hold any public office, position or employment.

SECTION IV

1. The Governor and all other civil officers of the State Government, except judicial officers, shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

2. The General Assembly shall have the sole power of impeaching in such cases by a vote of a majority of all the members. All such impeachments shall be tried by the Senate, and members, when sitting for that purpose, shall be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence;" and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate.

3. Judgment in cases of impeachment shall not extend further than to removal from office, and to disqualification to hold and enjoy any public office of honor, profit or trust in this State; but the person convicted shall nevertheless be liable to indictment, trial and punishment according to law.

* * * *

ARTICLE XI
SCHEDULE

* * * *

SECTION III

1. The Governor in office at the time this Constitution takes effect shall hold his office until noon on the second Tuesday in January, one thousand nine hundred and forty-seven. A Governor shall be elected for a full term at the general election held in the year one thousand nine hundred and forty-six and each fourth year thereafter.

2. If, on the second Tuesday in January, one thousand nine hundred and forty-five, no Governor shall be in office, the powers, duties and emoluments of the office shall devolve upon the President of the Senate, and, in case of his death, resignation or removal, upon the Speaker of the General Assembly for the time being, until a Governor be elected as required in this Constitution for the unexpired term and qualified.

3. The first members appointed to the board of pardons established under this Constitution shall be appointed, one for a term of one year, one for a term of two years, one for a term of three years and one for a term of four years, and thereafter appointments shall be made for terms of four years.

4. On or before July first, one thousand nine hundred and forty-five, the Governor shall complete the first allocation of the executive and administrative offices, departments and instrumentalities of the State Government among and within the Principal Departments, required by Article IV, Section III, of this Constitution.

LETTER OF
AMERICAN VETERANS COMMITTEE,
TOWN OF MONTCLAIR CHAPTER

215 Montclair Ave.
Montclair, N. J.

July 9, 1947.

Mrs. Maxwell Barus,
75 Llewellyn Rd.,
Up. Montclair, N. J.

Dear Mrs. Barus:

The Town of Montclair Chapter of the AVC would like to offer, for your consideration, its views on veterans' preference in New Jersey civil service.

It is understood that there is a move on foot, by certain veterans' groups, to provide for the iron-clad permanence of veterans' civil service preferences by their adoption in the proposed new Constitution for this State. We believe that this is a matter for legislation alone. It is not the kind of program to be permitted to worm its way into as sacred a document as the Constitution of the United States or of any state in the Union.

This chapter of the AVC has vigorously opposed, and continues to oppose, the type of veterans' preference now in force in New Jersey civil service. The preferences which are already in effect are so disproportionate in favor of veterans as to endanger seriously the quality of municipal and state employees who serve, and are in the future to serve, in a public capacity. We are in favor of state recognition of veterans' rights, but believe they should be kept in proper balance with civic responsibility.

The drastic potential effect of the present civil service preferences is appreciated by only a few of the citizens of the State. To cite an extreme example: suppose, in a civil service examination, three non-veterans pass with 95's, three veterans pass with 80's, and three disabled veterans pass with 70's. The State or town, under the state law, must select one of the three top men. Under this state law, a disabled veteran automatically goes to the top of the list, so that one of the three men with a grade of 70 gets the job. Similarly, if there were no disabled veterans competing, the veterans who pass the test would all go to the top of the list. The effect of civil service on the veterans is that his abilities are almost discredited by this arbitrary emphasis on his war status; the effect upon the public administration is that the merit system is virtually destroyed or materially weakened, resulting in poorer public service.

We believe the best service to the veteran is necessarily the best service rendered to him as a citizen, not as a member of a politically coddled group.

Sincerely yours,

CHARITY MELCHER, *Secretary*

SOME CONSTITUTIONAL CHANGES RECOMMENDED BY NEW JERSEY COMMITTEE FOR CONSTITUTIONAL REVISION, APPROVED BY STATE CIO COUNCIL EXECUTIVE BOARD
APRIL 5, 1947

- I. An efficient and responsible *executive* department.
 - A. Elect Governor for four years, in odd years. A Governor to be permitted to succeed himself once.
 - B. Strengthen his veto power by requiring two-thirds vote to override any veto, and giving him more than five days to act.
 - C. Give him the power
 - (1) To require information in writing from department heads.
 - (2) To investigate state and local officers and agencies.
 - (3) To remove state officers for cause, after hearing.
 - (4) Seek appropriate court action to require compliance with the Constitution or laws by any state or local public officer or body.
 - D. State administration.
 - (1) Limit number of state departments (not over 20).
 - (2) With a few possible exceptions, departments to be headed by single commissioners appointed by Governor for terms corresponding to his own.
 - (3) Give the Governor the initiative, subject to legislative veto, by two-thirds vote, to allocate functions and agencies among the departments.
 - E. Provide for executive budget and limit the power of the Legislature to increase or add to budget estimates or enact supplemental appropriations. Require a consolidated state fund and single fiscal year. (Not to include local taxes which are state-collected.)
 - F. Require Senate to act on nominations within reasonable time limit. (Not exceeding 45 days.)
 - G. Provide that a state department head designated by the Governor shall act in his place immediately upon the occurrence of a vacancy or his temporary absence or inability, provided that the Legislature *may* elect a qualified person to replace such Acting Governor if the Governor be permanently separated from his office or if his absence or inability lasts more than 60 days.

LETTER OF CONSUMERS' LEAGUE OF NEW JERSEY

790 Broad Street
Newark 2, N. J.

June 25, 1947.

Mr. Oliver Van Camp, Secretary,
Constitutional Convention of New Jersey,
New Brunswick, New Jersey

Dear Sir:

The Consumers' League of New Jersey adopted the proposals of the Executive Department already presented to you by the New Jersey Committee on Constitutional Revision, with the exception of the provision on the succession to the Governor. The following proposals on a Lieutenant Governor have been adopted by the Consumers' League and are hereby submitted to you as Secretary of the Constitutional Convention. Please notify Mrs. Jean Kempson, Metuchen, N. J., if you wish us to appear before the Committee on the Executive.

The Constitution should provide for a Lieutenant Governor to be elected by the people of the State at the same time and for the same term as the Governor. He should possess the same qualifications for office as provided for the Governor. The Lieutenant Governor should serve as Governor in case of the death, permanent disability, impeachment, or absence from the State of the Governor. We do *not* propose that the Lieutenant Governor preside over the Senate as is done in most of the states. We believe that the President of the Senate should be elected by the members of that body and have the power of the vote on legislative matters. When the Lieutenant Governor is acting as Governor, he should not be involved in legislative routines and law making.

We also propose a provision unique in state constitutions. We believe that the Lieutenant Governor-elect should serve as Governor in the case of the death or permanent disability of the Governor-elect. The recent difficulty in Georgia points to the necessity of such a provision.

Our reasons for recommending the office of Lieutenant Governor are as follows:

1. He would save the energies of the Governor by taking over many of the ceremonial duties such as banquet speeches, laying of cornerstones, and addresses at conventions, etc. He could meet with some of the numerous delegations which swarm the State House.

2. Transition periods would be smoother when he serves in the absence of the Governor from the State because he would be near at hand and should presumably have had day-to-day knowledge of executive problems.
3. He would be elected by the voters of the entire State and on the same ticket as the Governor. Even though he might, at times, be of a different faction than the Governor, he would represent the same party organization to which the people have entrusted the law enforcement and appointive powers.
4. A provision for a Lieutenant Governor is particularly important if, as we hope, the Governor is to be elected for a longer term and be re-elected. There will be more occasions when an acting Governor will be needed than heretofore, and he should be the choice of the voters of the whole State.
5. The office of Lieutenant Governor is not an untried experiment. All but 11 states have Lieutenant Governors, including Georgia which included the office in her 1945 Constitution for the first time. Some government experts consider the office a mere fifth wheel, but that has not been the experience of our members who have lived in states which have Lieutenant Governors. The wise Governor makes use of the Lieutenant Governor to free himself for the most important and constructive work of the Executive Department. The people of the State gain in better administration when the Governor is able to give more time and thought to policies rather than to administrative details and ceremonial functions.

Very sincerely yours,

(Mrs. Richard A.) SUSANNE P. ZWEMER,
Acting President

MEMORANDUM OF HERMAN CRYSTAL, ESQ.

July 10, 1947

To: Committee on Executive, Militia and Civil Officers

From: Herman Crystal

It is suggested that some consideration might be given to that portion of the Constitution dealing with the Governor's veto power, as it pertains to the Appropriations Bill.

At the present time the only way in which the Governor can indicate disapproval of action taken by the Legislature in connection with the Appropriations Bill is either to delete completely a line item or veto the bill itself.

Some thought should be given to a method whereby a Governor can reduce some single item in the Appropriations Bill without the necessity of deleting the item completely. For example, the Governor may not wish to raise the salary of a department head. The department head may appeal over the Governor's head to the Appropriations Committee and receive the increase. If the Governor is forced to accept the increase, he has lost effective control over the department head, who knows that he can appeal to the Legislature in the face of a gubernatorial disapproval. The Governor should have power, at least, to veto or reduce down to the amount of his recommendation in the budget message.

BRIEF OF FORMER GOVERNOR WALTER E. EDGE

HOW MUCH POWER SHOULD A GOVERNOR HAVE?

As the members of this Committee have been informed, I have taken the opportunity heretofore of publicly expressing some of my views in the public interest on what I believe to be desirable in the new Constitution, particularly on broadening the powers of the Governor.

My understanding is that there is general agreement among those who have appeared before your Committee, and apparently among members of the Committee itself, upon the desirability of extending the term of office of the Governor from three to four years; of increasing his veto power; and of providing for appointment by the Governor, with the consent of the Senate, of all department heads who would have terms coincident with that of the Governor.

As I have previously indicated, I am in hearty agreement with these objectives and will not deal with them further in this memorandum. It appears, however, there is considerable controversy and difference of opinion as to the right and desirability of the Governor to succeed himself in office. It is my purpose, therefore, with your permission, to address myself at this time directly and solely to that subject, which I consider most vital.

I think it will be generally agreed that, like other provisions of our present Constitution which are sound, we ought not to depart therefrom merely for the purpose of making a change; but if we do make a change, it should be based upon experience, sound reasoning, and, above all, it should be in the public interest.

At the outset, let me say very frankly that I do not for one moment question the purpose or motives of those who have appeared before your Committee and advocated the right of a Governor to succeed himself, and I apply this characterization with sincerity even to those who have reversed the convictions they held in previous years as well as those who now are giving their testimony on this subject for the first time.

I believe that Governor Driscoll, in voluntarily asserting that even though the Constitution permitted him to do so he would not be a candidate to succeed himself, acted graciously and magnanimously. I am certain that in stating this unequivocal position, he did so because he believed in it. I am equally certain that as a student of government he does not look upon differences of fundamental principles of government as being in any way personal. And I am confident also that we can all agree upon the fact that the advancement of different thoughts for the purpose of having them considered by

the delegates to this Convention does not in any way interfere with any gubernatorial, legislative or party program.

This is a most fortunate factual situation because it makes it possible for us to discuss this very important subject of gubernatorial succession without having the slightest reference to any particular individual. The present Governor says that he would not take advantage of it, and certainly it is far too early for any of us to even guess the identity of the next Governor. Therefore, we are in the happy position of being able to apply our thoughts entirely to the fundamental question without the involvement of individual personalities.

As I am able to read and understand the objections which have been voiced to a continuation of the present non-succession provision of the Constitution they are approximately as follows:

1. A good Governor should have an opportunity of being re-elected so that he and his program may receive the approval of the people, and the people should have the right to reelect a good Governor and keep him in office, thereby receiving the benefit of his services.
2. Under our present system of non-succession a Governor is only strong during his first year. He becomes weak in his second year and ineffective in his third and final year.
3. If a Governor is elected for four years (as I think he should be) and has the right to succeed himself, he will be able to attract to the public service of the State better men and women who will give better service to the offices to which they are appointed.

I shall try to answer these objections in the order in which I have enumerated them above.

I certainly assume that no one would contend for a single moment that a system of government should be changed and a constitutional provision rewritten merely for the purpose of permitting any Governor, no matter how good he might be, to satisfy personal ambition by being reelected to a second consecutive term. If he is to be reelected it should not be for personal glorification. I hope that we will never see the day when a Governor of New Jersey is so lacking in devotion to his State and the welfare of his people that he will feel that he has to be reelected in order to be properly compensated for the service which he has rendered.

Certainly any man worthy of the highest office within the gift of our people should, I think always has, and I have enough faith in my fellow Jersey men to believe always will, have enough pride in the accomplishments which can be achieved through one term to feel that he has been privileged to make a contribution to the wel-

fare of his fellow citizens, which does not require a certificate of reelection to be used as a badge of merit.

When the argument is advanced that the public should have the opportunity of retaining the services of a good Governor, it seems to me that the answer must be found in the incontrovertible fact that there has never been a time in the history of New Jersey when we were limited to one man who was capable of being a good Governor. I am confident that none of us ever anticipate a time when the intelligence, civic-mindedness and patriotism of our citizenry reaches such a low ebb that there will not be another man available to take over the duties of the Governorship and perform them equally as well if not better than his predecessor.

If it is desirable to permit a Governor to be reelected so that the public may benefit by a continuation of his services, then why should the succession be limited to a second term, which I notice is the suggestion made by most of the succession advocates? If, as contended by some, the decision as to whether or not a Governor should remain in office after one term should be transferred from the Constitution to the people, then why should the people be limited in their choice? If he has been such a good Governor that he has won the approval of the people and merited his election, can't you then trust him to be reelected the third time and perhaps even the fourth? The answer to all of this, of course, is that the argument for succession, at the same time limited, just does not add up to common sense reasoning.

The contention that a Governor is not strong and effective in the administration of his office during his entire term, if true, is a reflection more upon the individual than upon the system. The statute books of our State are filled with evidence of the fact that Governors in your time and in mine have been able to have important and controversial legislative features of their programs enacted into law in the last months of their last year with the necessary cooperation of the Legislature. If I may be pardoned for speaking personally, let me say that I greatly enjoyed that experience, which was made possible with the helpful assistance of four members of your Committee (Senators Barton, Farley, Young and Van Alstyne) in their capacity as members of the Legislature. If a satisfactory and constructive record can be made in three years, certainly the contemplated fourth year should provide that much additional time to complete any forward-looking, progressive program upon which the candidate has received the approval of the people by his election. This program having been completed, can it be denied that it would be in the best interest of the people to have in the gubernatorial office a new personality with new thoughts and new vision?

I have read one editorial advocacy of gubernatorial succession

which said that Governors found "in their second and third years in office that their ability to function for the welfare of the entire State had been impaired by wholly unmodern restrictions in the Constitution." If this is sound, what is going to happen in the second, third and fourth year of the Governor's second term if he is allowed to succeed himself? If under our present system he becomes ineffective in his second and third years, how will he be any more effective in the corresponding years of his second and last term?

This same source argues that "A four-year Governor prevented from succeeding himself might mean a Governor with three weak years instead of the present two." If this reasoning be sound, then the author thereof is admitting by his own words that the last three years of the second four-year term will be "weak" ones. If we must have "weak" and "ineffective" years of a Governor's administration, isn't it much better to have them in the last year of his four-year term than to have what would undoubtedly be a vacillating last year of the first term and so-called "weak" years for the last three years of his second term? In other words, this advocate would substitute for our present system four ineffective years, whereas by his own argument, without succession, we might limit this undesirable period to one year.

Try as I have, I find myself utterly unable to comprehend the logic of the argument that if a Governor who has been elected for four years has the right to succeed himself that, as a result thereof, he will be able to draft a higher type of citizen into public office. I assume that this argument is intended to apply not to the great rank and file of civil service employees, who perform so splendidly for the State, but to department heads, their deputies, and to the non-salaried members of important boards and commissions. My experience has been that men and women who are willing to accept public service in offices of the type mentioned can be divided into three classes:

1. Those who by virtue of financial independence are able to sacrifice their personal business and professional pursuits and give their time to the public service.
2. Those who are willing to make a sacrifice for a while with the idea they will gain experience and prestige in public office and then resign and capitalize that experience in private life, either in business or a profession.
3. Those who want a job in the state service as a means of livelihood which, of course, is a perfectly honest ambition.

Now let's see in which, if any, of these groups the standard would be raised if the men and women involved were sure they could stay for four years and look forward to four years more. Let us look at the first group, those who have financial independence. Certainly they do not care. They are willing to give their time, if they give it,

because they think that in so doing they are rendering a service to their fellow citizens. First of all, these people do not care generally whether they serve one year, three, five or eight. In fact most of them do not prefer to serve too long. All that one needs to do is to compare the situation in the Federal Government. The men who are appointed to the President's Cabinet are usually men of affluence who give up activities that afford them a much greater financial return in order to be of service to their country, and perhaps for a time enjoy official atmosphere and power. How many Cabinet officers, except during times of war, serve for eight full years? The record will show there are very few of them.

Members of your Committee who are familiar with the departments of our State Government, and I think all of you are, such as Institutions and Agencies, Port Authority and other state agencies managed by non-salaried boards, are familiar from your own knowledge with the high type of citizenship which the Governors of this State, regardless of their political affiliation, have appointed to these offices. Does anyone contend that the men and women who now make up the membership of these boards and agencies could be improved upon in character, or ability to serve, merely because the Governor who appointed them thought that he had a chance of being reelected and could assure them of eight years of service instead of four? In all fairness check over the membership of the many commissions and agencies upon which men and women of this type serve and ask yourselves which one of them could be discarded for a better type of public official.

Now as to that class of people who want to hold public office for its experience and prestige in order that they may resign and capitalize thereon. If a man or woman really wants the benefit of public office so as to use it in private business thereafter, there is no sound objection to that, providing that while they are in office they give the State honest and efficient service. However, from the individual viewpoint the worst thing that could happen would be for him to continue on beyond three or four years, during which time he has given up completely his business or profession. I assume, of course, we are talking of full-time public officials who would have no other business interest while giving all of their attention to their state activities.

When people of this type leave public office they must reestablish themselves, and in order to do this to the best advantage it is most desirable that they maintain some of the contacts which they had before entering state service. If they wait beyond three or four years those contacts are gone and business has vanished, and it is that much more difficult for them to reestablish themselves. If they haven't gained sufficient experience and prestige in four years in

office to be able to benefit therefrom in their private activities, they certainly won't be any better off if they serve eight years. If they continue in state service for eight years, they find at the end of that time that they are naturally much older than when they started, their prior business connections no longer exist, and they are not so desirous of engaging in competitive enterprise; the security of a public position has more attraction to them, and they then become people who have to have a public job in order to live. Creating situations of this kind is detrimental rather than helpful to our citizenry, particularly to those especially concerned.

If we want career men, and I believe we do, to head many departments and agencies of our government; if we desire to keep men who are non-political and who are experts in their line, like Commissioner Bates of the Department of Institutions and Agencies and Commissioner Walsh in the Division of Taxation, the answer is not eight years for a Governor and uncertainty for the expert, but tenure for the career men. If time is required in order to find out whether a man or women is qualified to be a career man, and it probably is, laws could provide easily enough that tenure should become effective after two, or three, or four years in office.

Certainly any Governor can find out after a man has worked for him for two or three years whether or not he is qualified and whether or not in the public good he should be given the benefit of tenure. If he should have it, give it to him and relieve him from political manipulation. That method will attract competent, able men to public service more quickly than the knowledge that at the end of four years they have to be a cog in the Governor's political machine in order to keep their positions.

Now as to that class, and it is most numerous, of people who seek public jobs for the purpose of making a livelihood. They, too, should have tenure of office so that they may have the benefit of security, provided that they are qualified and competent. I must repeat that the way to build up the government service by the use of career men is to make that career dependent upon good conduct in office and not upon election-day results.

I assume that it is generally admitted that the motive which actuated the framers of the present Constitution in restricting the Governor against succeeding himself was to protect the people against an all-too-powerful Chief Executive. That motive was sound in 1844, it is sound today, and it will always be sound. I am sure that the members of your Committee have not overlooked the fact that with the increased powers it is proposed to give Governors under the new Constitution, and which I assume will be given to them, that the Governor of New Jersey will be by far the most powerful chief executive of any state in the Union. Don't you members of the Con-

vention think we had better be careful lest he become too powerful?

It seems most important to me in a consideration of this subject that we give full weight to the power and authority which the Governor of this State has under the present Constitution, and I am sure will have under the new Constitution, by way of making appointments. It constitutes power and authority that no other governor has. For instance, how many other governors appoint the justices of the Supreme Court of their respective states? Only Delaware, Maine, Massachusetts and New Hampshire. How many other states permit their governors to appoint all their trial court judges? Only these same four states, plus Florida and Rhode Island, and in the latter states the governor cannot appoint the Supreme Court justices.

How many other states allow their governors to appoint the secretary of state? Only six: Delaware, Maryland, New York, Pennsylvania, Texas and Virginia. How many other states permit the governor to appoint an attorney-general with his vast powers over patronage and law enforcement? Only Pennsylvania and Wyoming. How many other states permit the governor to appoint every prosecuting attorney with their vast potential power and control in their respective counties? None of which I know.

How many other states elect only a governor by popular vote and entrust him to appoint all the major state officials and judges of all the courts? None. Incidentally, this is the situation under our present Constitution, without the greatly increased powers which it is proposed and assumed the Governor will have under the new Constitution.

In our neighboring great State of New York, as you know, the Governor has no authority to appoint judges or district attorneys except temporarily where vacancies occur before election. In that state also both the attorney-general and comptroller, each of whom controls a vast amount of patronage and wields tremendous power in his own official sphere, are elective officials.

This power of appointment, of course, emphasizes greatly the fact that a Governor who is permitted to serve eight continuous years will during that time have appointed *every judicial and state law enforcement officer in the State of New Jersey*. I cannot emphasize too strongly the potential danger of a system which permits any one man during his term of office to place every judicial officer and every member of the state law enforcement system under personal obligation to him. This tremendous grant of power is not only denied to any governor of any state of the Union, but it is also denied the President of the United States. The latter appoints federal judges, but they are appointed for life, and the number who are appointed during any period of eight consecutive years is a small percentage of the whole.

I know it is said by some, as I mentioned earlier in this memorandum, that the people should be permitted to decide whether a Governor should be reelected. Ours is a government of political parties. We in New Jersey have for many years nominated our Governors by means of the direct primary. We all know what a small percentage of the citizens who are eligible to vote participate in those primaries. We know, those of us who have practical political experience, how easy it is for organizations to dominate primaries. Is there any member of this Committee who thinks for one minute that a Governor who has served four years with the tremendous amount of power he will have would have any difficult nominating himself in a party primary regardless of whether he had been what we call a "good" Governor or not?

The primary is supposed to give a voter an opportunity to make his selection. Does anyone think that the voters could effectively oppose an organization headed by a Governor in office backed by his numerous appointees, all of whom are obligated to him for appointment and who expect to be reappointed? Even if they wanted to, they dare not oppose his renomination. Of course such a primary would be a farce so far as opposition to the machine and its candidate was concerned. To give the Governor the power which is contemplated under the proposed Constitution and then to permit him to succeed himself is tantamount to abolishing the primary as far as the second nomination is concerned.

I note that the statement has been made that political machines have grown up in New Jersey and in other states where the governor is limited to one term. Of course they have. They have also grown up and continued to be powerful over a period of many years in states where the governor can succeed himself. Surely everyone knows that it would be much easier to build and perpetuate a political machine where the Governor, with complete control of all state patronage, was able to succeed himself than it would be if he were not permitted to do so. Certainly no one can deny the fact that more power and more patronage helps to build a machine rather than to destroy it.

Reference has been made to the State of Louisiana and the Huey Long machine and attention is called to the fact that it is a state which prohibits a governor from succeeding himself. In that connection let me also call your attention to the fact that with all the power apparently possessed by Huey Long as governor of that state, he did not have the authority to appoint either the judges of the appellate court or of the trial courts, the attorney-general of the state or the prosecutors. Apparently even this political tyrant never sought to place this power in the hands either of himself or his

hand-picked governors. In that state all of these officials were and are elected by the people.

In conclusion, another point worthy of consideration is the incentive a Governor-elect must have when he realizes he has only three years, possibly to be increased to four, to put his program into effect.

There can be no vacillation or damaging compromises. He must be courageous, positive and earn public support, if he wants to do a job.

On the other hand, succession invites delay of a legislative program and the administration is apt to be more or less unproductive.

To sum up, my experience leads me to believe that the evils which could ensue from permitting a Governor to succeed himself far outweigh the good that possibly could result. As a suggestion, why not continue the present prohibition against a Governor succeeding himself until the new Constitution can be tested in actual operation? It would then be possible for the question of a Governor succeeding himself to be voted upon separately as a single amendment, with every indication the amending process by that time would be greatly simplified and amenable to the will of the people.

Respectfully submitted,

WALTER E. EDGE

LETTER FROM FORMER GOVERNOR WALTER E. EDGE ON SUCCESSION

June 11, 1947.

Mrs. Jane E. Barus
75 Llewellyn Road
Montclair, New Jersey

My dear Mrs. Barus:

In view of the fact that my plans for the summer will take me out of the State during most of the time of the Constitutional Convention deliberations, I would like to take this opportunity of supplementing the views which I have heretofore expressed on the important question of gubernatorial succession.

If I were to be available when the proper Committee of the Convention holds its hearings on this subject, which I assume it will, I of course would appear and present my views at that time; but because of my contemplated absence I am using this means of acquainting the delegates with my thoughts upon this subject.

With a fairly clear knowledge of executive responsibility gained through some experience I firmly believe that after extending the gubernatorial term to four years and granting additional executive powers, both of which changes I approve, that it would be a serious mistake to permit a Governor to immediately succeed himself.

During public hearings when the 1944 draft of a proposed new Constitution was under consideration, the ex-Governors were invited to appear and testify on this subject as well as that of other executive responsibilities. Former Governors Fielder, Moore and Hoffman, all likewise qualified to speak from experience, frankly and bluntly opposed immediate succession. I notice that Governor Driscoll, who has in some public utterances leaned towards permitting succession, has specifically stated that it should not apply to himself.

The only arguments I have heard supporting the theory of a governor succeeding himself is that the public should not lose the services of a satisfactory Governor provided of course that they were able to obtain this rare specimen. Further, that if the Governor-elect has the possibility of eight years in office, he could obtain more satisfactory cabinet officers and department heads.

As to the latter subject, history proves otherwise. A new President is usually expected to run for re-election, and yet the record shows that few if any cabinet officers last out one presidential term, not to speak of two. Many properly equipped citizens cannot afford to give indeterminate time to government service unless it be

under extraordinary circumstances such as war or other crisis. Of course, professional politicians and job-seekers are always obtainable.

On the other hand, with the Chief Executive clothed with increased veto and investigatory authority plus the tremendous power of appointment of all judges, prosecutors and department heads, a Governor motivated by a desire for political power could over a period of four years so entrench himself that he could not be dislodged from office. Eight years is a long time to be hamstrung with a personally dictated and selfishly administered State Government.

If the public believe it to be in their interest to recall and continue the services of a satisfactory Governor, he can in due time be returned to the executive office. It has happened here.

I am sure that the Convention will give serious thought to this most important question, and I firmly believe that it will be distinctly in the interest of all of the people if the term of the Governor is increased to four years with a continued inhibition against immediate succession.

Sincerely yours,

WALTER E. EDGE

MEMORANDUM OF FORMER GOVERNOR CHARLES EDISON

In New Jersey the Governor is the lone state official elected by the will of all the voters. His responsibility to all the people of the State is greater than that of any other elected official. Therefore, his authority to carry out this responsibility should be, within proper limitations, commensurately great. This is not now the case.

The present State Constitution was the product of the thinking and conditions prevailing 103 years ago when it was drafted. For the period, it may have qualified as an adequate and admirable document; it undoubtedly reflected the majority will of the people of that time. Today, much of its goodness has been dissipated by population, industrial, social and other changes which have occurred within New Jersey and elsewhere in our Nation.

I believe that one of the ways in which New Jersey's Constitutional Convention can provide us with a more worthwhile and effective Constitution lies in reasonably enhancing the powers of the Chief Executive. In the following paragraphs, I will attempt to highlight some of these desirable changes.

Term of Office

New Jersey alone of the 48 states provides that a Governor shall hold office for a term of three years. There is no good reason why the term should not be set at four years, the term allotted to the President of the United States and to a majority of governors of other states. There are good reasons, though, for not retaining the three-year provision. The three-year term causes the election of a Governor to coincide with the election of the President every twelfth year, thereby unnecessarily commingling state issues with national issues. Another reason is that a three-year term is too brief to permit a Governor to initiate and carry through a good, comprehensive program.

It would seem reasonable and beneficial to me that the proposed new State Constitution should provide for a four-year term for the Governor, so arranged that each gubernatorial election would occur midway between the Presidential elections.

The existing constitutional ban against a Governor succeeding himself is, at best, of negative merit. It might possibly serve to prevent an undesirable Governor from gaining reelection—which, after all, in our democracy is a problem more properly to be resolved at the polls—but it is positive in that it precludes a highly desirable Chief Executive from being reelected, with great benefit to the people. To avoid the possibility, however, of building up a highly personalized and entrenched machine even a good Executive should

be limited to two terms of four years each.

Lieutenant Governor

Our present constitutional provision making the President of the Senate the Acting Governor upon the death or inability to act of the real Governor is, to my way of thinking, indefensible. There is no logical reason why the duties and powers of the Chief Executive of our State should become vested, by reason of death, accident or other circumstances, in a Senator elected from a single county and selected for the post of President of the Senate by his colleagues of the majority party behind the closed doors of a party caucus.

There should be a Lieutenant Governor, elected from the State at large, in whom the full powers and duties of the Chief Executive would be vested in event of death or other cause prevented the real Governor from serving.

There is another reason for needing a Lieutenant Governor. While this reason is not as basic as that heretofore pointed out, from a practical standpoint it is nevertheless important. Any man elected Governor is deluged with demands upon his time. This group wants him to speak. That group wants him to lay a cornerstone. Another wants him to hand out diplomas. Each group is deserving of consideration, but with only 24 hours in the day a Governor cannot possibly fulfill even a small portion of such engagements. These people have a right to expect—within the bounds of reason—a Governor to cooperate with them and appear before their groups. They feel let down if a “Secretary” or an “Executive Assistant” is offered as a substitute, but they would gladly accept the Lieutenant Governor.

Executive Cabinet

It is my firm conviction that the title of Governor implies the right to govern, not dictatorially, of course, but certainly to the extent generally envisioned within our triangular system of checks and balances among the Legislative, Judicial and Executive Branches. In New Jersey, however, the right of a Governor to govern is frequently a fiction. The heads of many departments and agencies are vested with a degree of autonomy which makes them unresponsive to the will of the Chief Executive. Patterned somewhat after our Federal Government, there should be an Executive Cabinet comprising the heads of the major departments and agencies whose tenure would be at the will of the Governor.

At present a Governor may dismiss some department heads for cause. Even this power is denied to a Governor in some instances, because the Legislature has seen fit to preempt the executive function of appointment. Failure of the present Constitution to assure a Governor control over department heads lends itself to government by investigation rather than by administration. Government

by investigation is a poor substitute for proper executive authority.

Veto Power

The present system of allowing a Governor's veto to be overridden by a simple majority of the Assembly and of the Senate might well be likened to arming a patrolman with a cap pistol and, simultaneously, enjoining him to enforce law and order. A strengthened power of veto would be, I believe, highly desirable.

Experience in the Federal Government and among many of our state governments has indicated the desirability of requiring a vote of two-thirds of each legislative chamber before an executive veto can be overruled. While some states require a three-fifths vote, it would seem that the two-thirds rule is adequate.

Appointments

I believe a Governor's power of appointment should be strengthened in the following ways:

1. The new Constitution should restrict within narrow limits the Legislature's right to elect in joint session persons to executive, judicial and administrative posts. It is my belief that beyond the retention of the State Comptroller as an official to be elected by the Legislature, one cannot put forth a sound argument why the Legislative Branch, through the device of election in joint session, should invade the executive function of appointment.
2. The new Constitution should require of the Senate that it act within a reasonable period of time to confirm or reject executive nominations. Thirty days would seem to be a reasonable period, but certainly the time should not extend beyond 45 days. Failure of the Senate to confirm or reject within the time limit should result in automatic confirmation. Such a procedure would not be without precedent, because under our present Constitution an act passed by the Legislature automatically becomes law if it is not acted upon by the Governor within five days after its submission to him.
3. There also should be clarification within the new Constitution of the phrase "advice and consent of the Senate," in its relationship to executive nominations. At present this phrase has been corrupted to mean, in many instances, that an executive nomination is to be made only after the advice and consent of a single Senator have been obtained by the Governor. However, I should add that this desirable clarification probably would not be so urgent if the new Constitution required that the Senate confirm or reject executive nominations within a reasonable period of time.

June 23, 1947

LETTERS OF LESLIE H. JAMOUNEAU

WM. H. JAMOUNEAU CO.
36 Halsey Street
Newark 2, N. J.

June 30, 1947.

Hon. David Van Alstyne, Jr.,
Chairman, Committee on Executive,
Constitutional Convention,
New Brunswick, N. J.

Dear Sir:

I submit for the consideration of your Committee and report to the Convention the following objection to the proposal to remove the present bar to executive succession, or at least relax it to permit one or more consecutive terms.

Arguments for this proposal have failed to distinguish between the administrative powers, which I think it is generally agreed should be defined and strengthened along the lines of the New York Constitution, and the Governor's political and legislative powers, which I think are already excessive, and would become intolerable with the adoption of this proposal.

The arguments so far advanced, as I understand them from press reports, have been not at all objective, but highly partisan, and many vital facts and considerations have been glossed over or entirely suppressed.

For example, you have been told that the constitutions of about two-thirds of the other states contain no bar to consecutive terms, which is true enough, but I have seen no published comment on the fact that in substantially all these states the judiciary, as well as other high state offices, are elected by the people, and not appointed by the governor, as will be almost certainly provided in the new Constitution.

In fact, there are only eight other states in the entire Union where the higher judiciary is appointed by the governor—Connecticut, Delaware, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, and California, and even of these Florida's Supreme Court is elected, and in California the judges appointed by the governor are subject to removal by the people at the next general election.

This destroys the principal argument of the proponents of the proposal for reasons, some of which are obvious, and others which I would like to point out.

Secondly, these proponents have failed to consider how their proposal is affected by the non-representative character of the Senate, the evils of which I assume you will feel bound under your mandate

from the Legislature to perpetuate. Nor have these proponents pointed out that in substantially all of the 32 states whose constitutions permit consecutive succession the upper houses of legislature are required by constitution to be chosen on the basis of population.

It is not merely that New Jersey will stand almost alone in having a Constitution permitting an upper house elected in disregard of the universally accepted principle of popular representation, but the extent of this non-representation is and will continue to be fantastic. The Senate is controlled by 11 counties having a total population only 16 percent of that of the State. A block of counties with a total population less than that of Essex has 12 votes to Essex' single vote.

With the single exception of Rhode Island, nothing even approaching this degree of non-representation exists in any other state. It is true that South Carolina and a very few others permit representation in the upper house on a county basis, but these are all rural states and not to be compared to New Jersey. Not even in the Nazi Reichstag would such an undemocratic situation as this have been tolerated.

Substantiating this point, I call your attention to a letter published June 28th in the *Newark News* from Henry Stoner, President of the Connecticut Reapportionment Association, wherein Mr. Stoner comments: "The third least popularly representative body in all the civic representative democratic world is the New Jersey Senate, where state senators coming from less than 16 per cent of the . . . population can . . . control said body."

The possible merits and demerits of the second term proposal cannot properly be weighed as a single proposition, as from press accounts you appear to be doing, but only in the light of the effect upon it of the executive appointive power, and the non-representative character of the Senate.

It must not be overlooked that for a long time the Senate has already established itself as the dominant factor of the Legislature. An eminent governor (Woodrow Wilson, I think) once described the Assembly as a mere "louder echo" of the Senate. Perhaps, in view of the restrictions laid upon your powers by the Legislature, this unfortunate situation cannot be relieved at this time, but certainly it need not be aggravated.

The reasons for the Senate domination of the Legislature lie partly in its non-representative nature, itself a strong incentive towards venality and usurpation; partly in its confirming power over appointments, where the Assembly has no share or compensatory powers; partly in its absolute veto over the lower house, and finally in the lack of clearly defined constitutional powers in the Executive which has forced Governors, rightly or wrongly, to "deal" with the Legislature in various ways to effect their desired ends.

I realize that nothing can be put into the Constitution which will prevent a Governor from using his appointive powers to influence the Legislature. You cannot alter human nature or inspire or control the thoughts or motives of individuals by any sort of constitutional mandate. All that you can do is to separate the powers of the three branches of government so as to maintain a balance which will prevent, so far as can be foreseen, the abuse of the delegated powers by the branches to which they are entrusted.

Therefore it would be a tragic error, in my judgment, to add the tremendous power of successive terms to an Executive possessed with such wide appointive powers as have been accepted by fewer than eight other states, in connection with a Senate which, because of its almost uniquely and utterly indefensible non-representative nature, is almost completely unresponsive to the will of the people and already susceptible to executive domination, and which, moreover, holds confirmatory powers over appointments by the Executive.

Such a set-up would destroy all semblance of a balance of power and provide a direct incentive, if not an irresistible temptation, to abuse of power by both Executive and Legislature.

In the past, with only a three-year tenure of office, Governors have worked their will upon Legislatures by the promise of future appointment of legislators to high judicial and other state posts. The fact that good may have resulted from this practice is immaterial, for the practice is undemocratic and morally indefensible. It should not be countenanced, much less encouraged, by any change now to be made in our Constitution.

With a potential executive tenure of eight years or more, the evils of this practice must inevitably multiply, for obviously with the longer tenure more offices and positions will be available for offer at any given time, when a critical legislative action is pending, than there would be with a shorter tenure.

The aggravation of this condition by the non-representative character of the Senate, the dominating factor of the Legislature, cannot be overstressed. Obviously, when that body can be controlled in every way by a majority representing only 16 per cent of the people, the possibilities of improperly influencing that majority are thereby greatly increased. For example, a bad bill might adversely affect only a single county, and be of no concern to 12 other counties whose total population, incidentally, might be less than the single county that would be harmed. Because they would be under no pressure from their own constituencies to oppose the bad bill, these 12 Senators would be rendered doubly susceptible to the promises of reward and threats of reprisal by the Executive. The longer the potential tenure of the Executive, the greater will be the danger of improper domination of the Legislature by the Executive, and

the greater the danger of such unholy alliances as made Louisiana practically a totalitarian state under Huey Long.

I trust that you will inform me of any exceptions taken to the statements of this letter by members of the Convention or others, in order that I may reply to them and present further facts which, in the interest of brevity, I have omitted from this letter.

Yours respectfully,

LESLIE H. JAMOUNEAU

LESLIE H. JAMOUNEAU
36 Halsey Street
Newark 2, N. J.

July 16, 1947.

Mr. Alfred C. Clapp, Sec'y.,
Essex Delegation,
Constitutional Convention,
New Brunswick, N. J.

Dear Mr. Clapp:

Supplementing my letter to the Executive Committee of June 30th, of which I have given copies to our delegation, I would like to submit the following further comment and evidence on the question of the Governor's succession.

I regard this as the most crucial question before the Convention, because it concerns the heart of the whole document, namely the separation and disposal of the powers of the three branches.

So far the debate has been conducted in a vacuum. By this I mean that the issues have been discussed only academically and theoretically instead of empirically, as they must be if any sound conclusions are to be reached.

The Convention has been most inadequately supplied with the facts which are essential to an empiric discussion. I have read all the monographs prepared by the Governor's Committee pertaining to this question, with but little enlightenment. The whole subject of succession is disposed of by Prof. Rich in a single paragraph containing about 80 words.

I therefore submit for your consideration the following facts, the accuracy of which I vouch for.

In our gubernatorial campaign of 1934 both parties pledged no new taxes. As soon as Mr. Hoffman took office he proposed a general sales tax, alleging the existing depression as the necessity, but the bill which he drafted and presented to the Legislature was in no sense an emergency measure, but rather a radical and permanent revolution of the State's established tax system. The bill was espe-

cially obnoxious because it contemplated deriving more than half the revenue from sales of food, including even milk.

It became immediately evident that the proposal was indignantly resented by a vast majority of the people, and desired by only a very small minority, real estate owners. (I think I should mention that for many years the bulk of my income has been derived from real estate ownership, and was then.) Any other revenue means would have been more acceptable to the people.

Principal spokesman for the opposition included Arthur T. Vanderbilt, Lester Clee, leader of the Essex Assembly delegation, most of the editors of the State, and leaders of labor and civic organizations throughout the State. As a result of the opposition, Hoffman agreed to defer action for further study. During this time leaders of the Democratic Party maintained complete silence, despite the fact that the people in Democratic areas like Hudson and Middlesex were particularly opposed to the new tax.

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 on June 3, 1935, in substantially its original and obnoxious form. The vote was 31 to 27, the Republicans splitting 27 to 11, and the entire Democratic membership of 20 voting solidly for Hoffman, in gross disregard of the expressed desires 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 so vote.

Rafferty, a small-town lawyer and politician, was Democratic leader of Middlesex County, serving his fifth term as Assemblyman. He had been a lawyer only since 1929, and was not admitted to the bar as a counsellor until 1945, so that his practice and experience as a lawyer in 1935 must have been of a limited and unimportant nature. On June 8, 1935, three days after he cast his essential vote for the sales tax bill, Hoffman announced that he would appoint him to the Court of Errors and Appeals, on which a vacancy had existed since 1934, when Judge Dill had resigned to run for Governor against Hoffman. The period of Hoffman's failure to fill this office included a full term of the court.

On the following day, June 4th, the bill passed the Senate, 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 fury of indignation over the entire State. Typical of the editorial comment was one in the *Newark News* entitled "Hoffman's Stigma."

Although the bill has been passed exactly as the administration had drawn it, Hoffman failed to sign it for the full period permitted under the Constitution, in order to give the Republican-Democratic

coalition led by Rafferty, who openly appeared as Hoffman's representative, to force an adjournment of the Legislature. The purpose of this was to prevent an amendment of the law under pressure of a rising tide of resentment by the people, who were demanding that food, or at least some foods, particularly milk, be exempted from taxation. 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.

For four months Hoffman stubbornly refused 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 percent represented returns from food sales.

The stage to which the people's temper had mounted under the imposition of this tax, which went to the extreme of such Nazi-like provisions as requiring licenses for all 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. But the sentiment of the constituents of these Senators had not changed during this time; all that the Senators had misjudged was their determination.

For the purposes of our present problems, the above facts are to be weighed only in the light of the issue: Is the retention of the present limitation to a single term essential to the balance of power between the Executive and an independent Legislature, and will the extension of a second term destroy that balance and conduce to an executive usurpation of the Legislature?

The question of right or wrong of the sales tax is irrelevant and must not affect your conclusion; also it must be clearly recognized that Hoffman's actions were within the Constitution, and within the traditional methods of exercising the powers of Governor.

Hoffman's actions were indefensibly wrong, then, not because the sales tax is wrong in principle; not because he failed to fill the court vacancy within a reasonable time; not because of the possibility that Rafferty's deciding vote may have been influenced by the court appointment; not because of the "Dead-End Kid" element of the Senate which has been created by our defective Constitution, and which made possible his actions, but simply because he so used his powers as Executive as to nullify those of the people and the legislative representatives to which they had entrusted them.

Under any circumstances our constitutional system is vulnerable to executive usurpation. The sales tax episode, which I have recounted at length, is by no means unique. Unfortunately, they have been so numerous as to have dulled our sensibility to them and their implications. Hoffman's actions in the sales tax matter ought not

to be distinguished from those of Stalin, Hitler, or any other autocratic executive, for the only difference is that his usurpation of the legislative power lasted only four months instead of being permanent. But in my view, any such usurpation is intolerable, if only for a day, and our Constitution should, as far as it is humanly possible, prevent all usurpation of power. It must also be noted that in other cases of executive usurpation, no less serious in my opinion, the people were not aroused and the bad laws were not repealed.

On the basis of this evidence you have no reason to assume that in the future another Hoffman, another Hague, and another Raftery will not form another politburo, taking it upon themselves to decide how we are to be taxed, whether baby's milk shall be taxed at the same rate as mink coats, etc., and generally performing what are accepted as purely legislative functions.

It seems to me that a careful study of the facts above recited requires the conclusion that Hoffman would not have acted otherwise than he did if he had been eligible to a second term, and that this conclusion requires the rejection of the second term proposal. To accept it would be to increase and encourage an already existent and continuing potential subversion of the Legislature by the Executive, as I have demonstrated.

It seems to me also that eligibility for a second term would have encouraged rather than deterred Hoffman from selecting as judge of the State's highest court the Democratic county chairman of Middlesex. I think it is beyond question that a Governor limited to a single term is far more likely to select a highly qualified lawyer for such a post, even if without any political following, in preference to an obscure lawyer who happens to be county chairman.

But it is not only executive usurpation which would be fostered and aggravated by the second term, but judicial domination also, not to mention the quality of the judiciary. For proof of this, let us again turn to the record:

Hague, Jr., was appointed to our highest court by Governor Moore at the age of 34, less than three years after his admission to the bar. A vacancy had to be created for him, by the resignation of Judge Thomas G. Walker, a former Hague Assemblyman, who resigned to take a place on a lower court.

The appointment aroused unprecedented criticism in the press and elsewhere, and was described as a "shocking and brazen piece of political manipulation" by Lester Clee. The *Newark News* printed a caustic editorial, as did many other papers, including some in New York, that of the *Herald-Tribune* being entitled "Why Have a Republican Party?"

Notwithstanding urgent public demands, the Senate Judiciary Committee refused to hold a hearing on the matter and promptly

and unanimously confirmed the appointment. Mr. Driscoll, then a Senator, publicly commented on the great volume of protest mail he had received, and said that he might request a hearing, but it does not appear that he ever did.

The Senate vote for confirmation was 14 to 6, confirmation being possible only because seven Republicans joined with the Democratic minority. Only one of these seven Republicans ever ran successfully again for public office, and only one other ever even ventured to run again at all. The chairman of the Judiciary Committee was appointed by Moore to a judgeship about a year later. Another Republican had been made commander of the National Guard by Moore about a month before the appointment, a third became President of the Senate the following year. Two became Milk Commissioner and counsel thereto respectively, offices which had been created by the Legislature in which they were serving. The sixth was appointed Civil Service Commissioner by Governor Moore the following year, and the seventh was elected by the Legislature in which he was serving, and which confirmed the Hague appointment, to the office of State Comptroller.

There have been other judicial appointments which, in my opinion, were worse than the Hague appointment, but the single citation will serve for the point I am making. I think it is clearly established that the second term cannot possibly improve the present admittedly unsatisfactory system of executive appointment of judiciary with Senate confirmation, which, as I have been at pains to point out, is too often perfunctory at best, and at the worst, subject to political influences. I am hopeful that the Convention will adopt the Missouri plan, or seek some other remedy for this situation, but these must at best be regarded as only experimental, and they cannot possibly remove the objections to the second term as I have pointed them out.

Press reports of statements by delegates on this question indicate that some are having difficulty in deciding the question because of a feeling that the pros and cons are so nearly balanced.

I cannot understand this viewpoint, probably because of my entirely empirical approach and analysis of the problem. I view it as essentially an engineering problem rather than one of logic. To me the Constitution is a complex machine which requires repair. The test for any part which is to be replaced depends very little on the logical argument of how the new part may be expected to work, but rather on the mechanical considerations of what caused the failure of the defective part and how the new part can be integrated with the rest of the machine so that it will work to the desired effect.

In other words, discussion of the bare proposition that the Gov-

error should be permitted a second term is fruitless unless the surrounding circumstances are brought into discussion, as I have tried to do.

Considering the proposal in this isolated aspect, I would like to stress the point that the burden of proof lies on the proponents of change. Unless there is a clear preponderance of such proof, the safe rule is "let well enough alone," and wait until changing circumstances have clearly demonstrated the need for the proposed change. The people always have the right to amend, and they will exercise it at the proper time.

The Executive Committee has tentatively recommended the second term. This is understandable in view of the tremendous effort exerted by Governor Driscoll in presenting the case for the proposal. That case was impressive, not so much because of a preponderance of logic as because of overpowering prestige of the proponents' personalities, including the present Governor and four out of six of our living ex-Governors.

Two of these ex-Governors (Moore and Hoffman) have completely reversed their positions since 1944, when they were joined by a third (Fielder) in advocating single terms and neither has, so far as I can discover from press accounts, attempted to reconcile his conflicting testimony.

Governor Driscoll, and Messrs. Edison and Larson, now advocating two terms, did not, I believe, take any prominent position on this issue in 1944, although it was then just as critical and important as it is now.

The proponents' case was based mainly on so-called "expert testimony," that is, opinion testimony, where the witness merely gives his opinions, without necessarily giving any factual or other basis for them, these being supposedly beyond the comprehension of the tribunal hearing the testimony. I call your attention to an editorial in the *Newark Star-Ledger* of July 9th:

"The Executive Committee . . . ruled with the weight of the evidence yesterday in approving the right of the Governor to succeed himself. *On the basis of expert testimony*, it could have made no other decision."

I respectfully submit that the Executive Committee has fallen into the same lamentable error as the writer of this editorial. In a constitutional convention the only experts are the members of that body, and all its decisions should be based primarily on facts, arguments derived therefrom, and precedent. Expert testimony should be heard, of course, but its only value is to corroborate the findings of fact and logic, never to refute them.

In weighing the value of all testimony it is the plain duty of the Convention to examine every fact that may affect the value of the testimony, and for that purpose I submit the following facts:

Mr. Larson holds the important office of Commissioner of Con-

servation, salary \$12,000, not as a regularly appointed official confirmed by the Senate as required by the Constitution, but as a hold-over, holding his office from day to day and collecting his salary at the sole pleasure of Mr. Driscoll, who has never, so far as I can discover from a careful examination of press reports, issued any explanation for the six months' delay in making a nomination for this office and presenting it to the Senate for confirmation.

Mr. Larson's testimony, which consisted only of some verbatim repetitions of Mr. Driscoll's, may well then be discounted, and also to detract from Mr. Driscoll's testimony, in view of the unexplained delay in filling Mr. Larson's vacant office and permitting the Senate to exercise its constitutional powers.

The shameful events which transpired during Mr. Larson's term as Governor (1929-1932) should also be examined as evidence of the dangers of permitting succession. In the primary preceding Mr. Larson's election in 1928, ten of his supporters signed a note for \$50,000, which was proved to have been used for Mr. Larson's primary campaign. One of these co-makers was subsequently appointed to a judgeship. When, in June 1933, suit was brought by the bank on the note, the co-makers filed the defense that the note had been made in connection with a conspiracy to violate the election laws, pursuant to an agreement that the note was to be cancelled without payment in the event of Larson's election in November 1928, and that by reason of such criminal conspiracy no recovery on the note should be permitted by the court.

An obscure lawyer, William B. Harley, whom Larson had appointed as a judge in Passaic County, confessed that he had paid \$25,000 in cash for such appointment, depositing the currency in a desk in the Capitol in the presence of a state official. No attempt was made to connect Larson with the bribe, but this is immaterial to the point I am making, which is that neither of these episodes became publicly known until after the expiration of Larson's term. The Harley scandal broke in March 1933, and the primary scandal in February of that year.

Of the several other repercussions which followed Larson's retirement from office, one more should be mentioned. Shortly after leaving the Governor's chair he accepted an appointment as consulting engineer to the Port of New York Authority at \$100 per day. On May 12, 1932, the *Newark News* revealed that the appointment had been made at an executive session some time before, that it had caused great surprise because both Larson and the Authority had emphatically denied rumors that such an appointment was to be made. Because of the depression the Authority had recently deferred all construction on its projects, and in consequence had laid

off 100 regular employees, including engineers, to whose work Larson was assigned.

The action aroused state-wide public indignation, and several civic organizations passed resolutions of protest. On May 13, 1932, the *Newark News* revealed that Larson had first indicated to the Authority his desire for the job in 1930, at a time when he was Governor, and had an absolute veto over the Authority's acts. Larson's employment continued until 1942. His appointment to his present position, which was created by an administration-sponsored bill, was confirmed in a secret session of the Senate, and under suspension of the rules, more than three months before the newly created office became operative.

I have not had the time to make a similar research into the records of the other three ex-Governors, but wish to except Mr. Edison from any suggestion of criticism or reproach. His record, both in the matter of non-interference with the Legislature, and in exercise of the appointive power, was outstandingly good, and in striking contrast with those of Messrs. Moore and Hoffman, in which the Hague appointment and sales tax episodes may be taken as fairly typical. I urge, however, a detailed study of Mr. Edison's most constructive and successful administration as evidence that the single term restriction in no way hampers the *proper* exercise of constitutional power by a strong Governor.

In placing these facts before you I have been careful to state only what is importantly relevant to the two-term issue, and to avoid all merely personal criticism. I do not suggest that the testimony of any witness be disregarded, but only that it be weighed by the same standards expected of a jury in an ordinary trial at law, *i.e.*, the consistency, character, motives (self-interest, etc.) of the witnesses, and above all in the light of the factual record of experience and precedent. In determining the preponderance of the weight of testimony every element should be separately appraised, and mere repetition of the same argument by however many, or however eminent witnesses, must not be permitted to unduly influence your judgment.

The logical weakness of the argument for succession is evident from two admissions, or concessions, which the proponents of the proposal have made. Mr. Driscoll has pledged himself not to run for a successive term if the Constitution should be adopted with his proposal. This proposal is devoid of logic and, therefore, to the extent that it may influence the Convention to act against the logical objections to succession which have been presented, improper. From speaking to some of the delegates I am satisfied that many of them have been affected by this appeal, which is not to logic, but to emotion, and in my opinion most unfortunate.

The limitation of succession to two terms is equally illogical. All

of the arguments for a second term are equally cogent for a third and fourth, and the proponents of the proposal have failed to give any reason for the two-term limitation. The fact is, of course, that an overwhelming majority of the Convention would oppose a succession of three or more terms. But the only reason for this opposition is the fear of executive domination of the Legislature, deterioration of the judiciary, and the other ill effects of too much constitutional power in the Executive. That these fears are well justified has been amply demonstrated by the record I have placed before you. Reason would seem to compel rejection of the second term for the same reasons which have caused the proponents to reject the third term from their proposal.

In closing, may I emphasize the point made in my letter of June 30th; that there is no precedent in the constitution of any other state for such a concentration of power in the executive as is here proposed, resulting, as it does, from the unusual circumstances of executive appointment not only over the entire judiciary, which in itself is rejected by most other states, but also of county prosecutors, tax boards, election boards, etc.—substantially the entire administrative machinery of the State, including many agencies with predominantly judicial functions, combined with a Legislature which, because of its inexcusably non-popular representation, and which the Legislature has decreed shall stay that way, is peculiarly subject to executive domination, and which actually is and for a long time past has been so dominated.

Yours respectfully,

LESLIE H. JAMOUNEAU

LETTER OF SOL KANTOR, ESQ.

SOL KANTOR
Attorney at Law
Perth Amboy National Bank Building
Perth Amboy, N. J.

July 7, 1947

Mr. David Van Alstyne, Chairman,
Executive Committee,
The Constitutional Convention,
Rutgers University,
New Brunswick, N. J.

Dear Sir:

I desire to present the following suggestions to you and the members of your Committee.

I feel that the term of the Governor should be for three years and no more. He should not be permitted to succeed himself, nor ever hold office again. We have witnessed the experience in our lifetime, where Mr. A. Harry Moore, of Jersey City, was elected on three separate occasions. This was done because of the strong political organization of which he is a part. The same thing could happen again, in either party. It tends to build up a strong political machine, regardless of what argument may be advanced to the contrary.

I think it would be a good idea for the Governor to have his own Cabinet, as with the President of the United States. But he should be permitted to pick his own Cabinet and they should automatically go out of office with him.

I also feel that all county and local officers should be elected for a short term, say three years, and be permitted to be reelected, but shall not hold more than two terms of office. This will tend to break down the possibility of a strong political machine, which is the situation we have today in both the Democratic and Republican parties.

I wrote a letter under date of June 19 to Dr. Clothier in which I expressed my views as set forth above and also my views on the Judiciary. He referred my entire letter to the Judiciary Committee. I did not know, at that time, the rule as to referring each particular subject to a separate committee.

I shall be pleased to hear from you or any member of the Committee.

Yours very truly,

SOL KANTOR

RECOMMENDATIONS OF THE LEAGUE OF WOMEN VOTERS OF NEW JERSEY

(Excerpts from the League brochure, "Constitutional Changes,"
submitted to the Constitutional Convention in June 1947)

* * * *

THE EXECUTIVE

The Governor

The provisions of the present Constitution regarding the establishment of the Executive (*Article V, paragraph 1*), the qualifications of the Executive (*Article V, paragraph 4*), the eligibility of the Executive (*Article V, paragraph 8*) and the salary of the Executive (*Article V, paragraph 5*) are recommended as they now stand. The following items, which include either changes or additions to present constitutional provisions, are recommended:

1. *The Governor shall be elected by the legally qualified voters of this State at a general election held in 1949 and every fourth year thereafter.*

Explanation—This is the wording of the first sentence of the 1944 draft, Article IV, Section I, paragraph 4, with the addition of the words "at a general election held in 1949 and every fourth year thereafter." The addition is made here as part of a general recommendation that all state officials be elected in odd-numbered years to avoid conflict with national elections.

2. *The Governor shall be elected for a four-year term and shall be eligible for re-election.*

Explanation—Four years is a widely accepted term. It is recommended as long enough to allow the Governor to prepare and at least partially put into effect a comprehensive program, yet not so long as to be unendurable should the Governor prove inadequate though unimpeachable.

The Governor is the one state official elected by and responsible to the people as a whole. Their vote on the Governorship is their means of registering approval or disapproval of a governmental program, including administrative personnel, for the State.

3. *Provision shall be made for a temporary Acting Governor, and for succession in the event of death, impeachment, or permanent disability of the Governor or Governor-elect.*

Explanation—The present constitutional provision that the President of the Senate shall serve as temporary Acting Governor and shall succeed the Governor is unsatisfactory because this official is elected by a small minority of the people. Either of the two following provisions are recommended as preferable alternatives.

a. *A person designated by the Governor or Governor-elect in a manner to be prescribed by law, but not a member of the Legislature or Judiciary of the State, shall be the temporary Acting Governor, and in the case of death, impeachment, or permanent disability of the Governor shall succeed him until the next general election, provided that the Legislature may elect a qualified person to replace such acting Governor after 60 days.*

Explanation—Gubernatorial appointment allows for a succession which will provide continuity in executive policies until a general election gives the people an opportunity to express their wishes.

b. *A Lieutenant Governor shall be elected at the same time, for the same term, in the same manner, and subject to the same conditions of eligibility as the Governor. He shall preside over the Senate without vote.*

Explanation—A Lieutenant Governor is elected by all the people of the State for the express purpose of providing for the succession. It is a method used by 36 states. It makes possible the filling of an unexpired term without resort to a special gubernatorial election, with the attendant confusion in state business.

Powers of the Governor

1. *The heads of all administrative departments shall be appointed and may be removed by the Governor. Appointments shall be made with the advice and consent of the Senate which shall be required to confirm or reject such appointments within a specified reasonable length of time. All other officers in the administrative service of the State shall be appointed by the Governor or heads of administrative departments as provided by civil service.*

Explanation—This proposal is recommended. It recognizes the principle, widely accepted by authorities in government, that administrative power and responsibility should be concentrated in a single popularly elected chief executive. The requirement that the Senate act upon appointments within a specified length of time is made in order that public offices not remain unfilled.

2. *The Governor may at any time require information, in writing or otherwise, from officers of any administrative department, office, or agency upon any subject relating to their respective offices.*

Explanation—The inclusion of this provision is recommended although such powers may appear to be an obvious part of executive prerogative. Many New Jersey Governors have been hampered by their inability to require necessary information.

3. *The Governor shall have power to veto bills and specific items in appropriation bills. His veto may be overridden only by a two-thirds vote of each house of the Legislature. Adequate time for*

consideration of all bills by the Governor shall be provided, including an additional time allowance at the end of the legislative session.

Explanation—It is recommended that a two-thirds vote be required to override a veto. This is the widely accepted fraction. Clearly more than the simple majority necessary to pass the original bill should be required. The three-fifths majority proposed in the 1944 draft is only two more than a simple majority in the case of the Senate.

It is recommended that the Governor be given sufficient time for adequate consideration of all bills. Under the present Constitution any bill not returned to the Legislature within five days becomes law. This provision sets too short a time limit. The "Model State Constitution" recommends 15 days. The majority of states allow ten.

It is also recommended that an additional time allowance be granted at the end of the legislative session. Since the Governor is often presented with a great number of bills at this time, 30 days seems a not unreasonable period to allow for final consideration.

4. *The Governor may cause an investigation to be made of the conduct in office of any state officer except a member of the Legislature or a judicial officer. After notice, service of charges, and an opportunity to be heard at a public hearing, all as shall be provided for by law, the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office.*

The Governor may also cause an investigation to be made of the conduct in office of any officer or agency of local units, excluding judicial officers. He shall have the right to seek court action to require compliance with the Constitution or laws by any officers.

Explanation—This provision is recommended. It is the duty of any governor to execute constitutional and legislative provisions. If he is to fulfill the function for which he is elected, it is necessary that he have the legal right of investigation. This right, however, should be carefully safeguarded so that any investigation becomes public.

5. *The Governor shall have the power of pardon.*

Explanation—This provision is recommended. The power of pardon is given to the Governor alone by most state constitutions. The power of parole has not been included in the above provision. An adequate parole system requires special expert knowledge and should be changed as that knowledge advances. The above system should therefore be established by law, not by the Constitution.

6. *The Governor may appoint an Administrative Manager whose terms shall be indefinite at the pleasure of the Governor. The Governor may delegate any or all his administrative powers to the*

Administrative Manager. The Manager shall be assisted by such aides as may be provided by law, but all such aides shall be appointed and shall hold office under civil service regulations.

Explanation—This recommended provision is contained in the “Model State Constitution,” *Article V, Section 506*. It permits an administrative officer at the state level corresponding to the municipal manager at the local level.

Executive Departments

1. *There shall be principal departments in the State Government, not more than 20 in number, created by executive order; and among and within them shall be allocated by the Governor by executive order all the executive and administrative offices, departments and instrumentalities of the State Government, in such manner as to group same according to major purposes.*

Explanation—This is the wording of the 1944 draft, *Article IV, Section III, paragraph 1*. It is recommended that the number of state administrative departments not exceed 20. Some states which have recently revised their constitutions set a lower limit. It is essential to efficiency and economy that the number be small enough to make possible adequate supervision and control of administrative activity by the Governor.

2. *The initial establishment of principal departments and the allocation of offices and functions among them, as provided above, shall take effect four weeks after the executive order providing therefor shall have been submitted to the Legislature, unless disapproved by a two-thirds vote of the members of each house within that time. The Governor may subsequently from time to time reallocate functions and agencies, subject to legislative disapproval within six weeks by a similar two-thirds vote.*

Explanation—It is recommended that the Legislature voice any disapproval of the original reorganization of administrative departments within four weeks in order to facilitate the change. A longer period is suggested for consideration of later changes.

3. *The Legislature may by law from time to time allocate functions and agencies among the departments, subject to the Governor's veto.*

Explanation—This provision is recommended in order to permit the Legislature to take the initiative when, in its opinion, it is desirable, without being dependent upon the Governor for action.

4. *Each department shall have a single head appointed by the Governor with the advice and consent of the Senate for a term coincidental with his own, and subject to removal by him.*

Explanation—It is recommended that each department have a single head. This is in line with the opinion of most experts. Such

an arrangement increases efficiency and places responsibility on one individual who can be held to account. Boards are considered undesirable as administrative agencies because of division of powers and the absence of initiative and responsibility.

* * * *

PUBLIC OFFICERS AND EMPLOYEES

1. *Every appointive state officer shall, before entering 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 to perform the duties of his office faithfully and justly, to the best of his abilities.*

Explanation—This recommended proposal is identical with the 1944 draft, *Article VI, Section I, paragraph 1*. The present New Jersey Constitution contains a similar provision for State Senators and Assemblymen.

2. *In the civil service of the State all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions 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. Local municipalities shall either set up their own merit system or be a part of the state civil service system.*

Explanation—The above wording is that of the 1944 draft, *Article VI, Section I, paragraph 2*, with several changes. The inclusion of a constitutional provision for civil service is recommended. Civil service, with a carefully framed merit system, has proved the best means for securing qualified public servants, and should include all levels of government. It is suggested, however, that municipalities be permitted to choose either a merit system of their own or the state system. For this reason the words “and all its civil divisions” have been removed from the above 1944 draft statement and the second sentence has been added. A provision for special preference based on military service has also been removed. This is done in the belief that special preference for any group is contrary to the best interests of the public welfare as a whole.

3. *Any compensation for services or any fees received by any person by virtue of his appointive state office or position, in addition to the annual salary provided therefor, shall be forthwith paid by him into the State Treasury, unless the compensation or fees be allowed or appropriated to him by the Legislature.*

Explanation—The above wording is that of the 1944 draft, *Article VI, Section I, paragraph 3*. It is recommended in order to prevent a public employee from using his office for private gain.

4. *The following offices shall be deleted from the Constitution:*

Attorney-General, State Treasurer, Comptroller, prosecutor of the pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, Secretary of State, Keeper of the State Prison, county clerk, surrogate, sheriff, coroner, justice of the peace, and militia officers.

Explanation—This recommendation is made in order to avoid constitutional interference with such changes in the organization of state administration and of county and municipal government as may from time to time be desirable. Provision for such offices should be a matter of legislation. The question of the Auditor is considered under *The Legislature*.¹

5. *In all proper investigations by the Legislature or by the Executive any public officer or employee of the State of any of its civil divisions who shall refuse to testify or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify shall thereby forfeit his office or employment, and he shall thereafter be ineligible to hold any public office or employment.*

Explanation—The wording of this provision is recommended. Public office is a public trust and not a private prerogative. No honest official would object to testifying upon his performance in office.

¹ See recommendations of the League of Women Voters in the Appendix to the Proceedings of the Committee on the Legislative, Volume III.

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF NEW JERSEY ON CIVIL SERVICE¹

The League of Women Voters of New Jersey recommend the following proposals on the subject of civil service:

"In the civil service of the State and all its civil divisions all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions 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."

The above wording is that of section 900 of Article IX of the "Model State Constitution" prepared by the Committee on State Government of the National Municipal League.

The League would be glad to see written into this clause or into a general home rule clause a guarantee of the rights of counties and municipalities to set up their own civil service administrations as long as they adhere to the principles set forth in the Constitution.

The League of Women Voters believes in qualified personnel in government secured through a merit system. We believe that it should be written into the Constitution, thereby establishing the principle and the standards for administration set forth above as part of the basic law of the State. The League wishes to make it clear that counties and municipalities preferring to do so might be permitted by law to operate under locally administered merit systems. This would allow a degree of flexibility and opportunity for experiment not possible if all units were compelled to operate under our present Civil Service Law.

We presume that if the plan proposed for the organization of not more than 20 principal departments in the State Government with single heads appointed by the Governor with the advice and consent of the Senate, is adopted, Civil Service or Personnel should be one of those principal departments because it serves all departments and should not be subordinate to any one. It should have an advisory board of distinguished citizens to serve in a general policy-making capacity and to give the continuous citizen attention to the problems of the department which is necessary to make democratic government work; in other words, to serve in a "watch-dog" capacity, enlisting public interest and support for good administration and conducting investigations where that is necessary. Administration should be left entirely to the commissioner and his technical staff, with complete responsibility for results subject to the scrutiny of the board and through them of the public.

¹ This statement was actually presented to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. However, the Committee on the Executive, Militia and Civil Officers was the proper body to consider the subject.

We believe the establishment of such a system would make New Jersey civil service much more effective and overcome most of the weaknesses which have caused so much criticism and the reluctance of many municipalities to put themselves under its control.

We omit the clause included in the 1944 draft providing for special preference based on military service because we believe that special preference for any group would seriously interfere with the efficient working of the system. The merit system provides an orderly method of hiring and promoting employees for the "big-business" of operating state and local government in order to prevent waste of public funds. Veterans make up a large part of the tax-paying community and will lose, as a body, far more than a favored few might gain by any interference with the steady application of the merit system in government employment.

Civil service provisions are included in the constitutions of New York, Colorado, Ohio, California, Michigan, Louisiana, and Georgia. We hope that your committee will approve this recommendation to strengthen the State's governmental procedures by adopting a civil service provision which will signify public employment and make it truly a career service.

July 8, 1947.

BRIEF OF THE NEW JERSEY AGRICULTURAL SOCIETY¹

THE PURPOSE OF THIS BRIEF

To urge the constitutional delegates to include a provision in the proposed Revised Constitution which will retain the present satisfactory method of selecting members of the State Board of Agriculture.

A SUGGESTION

(A modification of the paragraph setting up boards and departments in the revision developed in 1944)

Paragraph 7, Section III, Article IV, of the 1944 proposed revision:

Whenever a board, commission or other body shall be the head of a Principal Department, the members thereof shall be appointed by the Governor with the advice and consent of the Senate. *Members of the State Board of Agriculture shall be selected as provided by law, and their names submitted to the Governor for approval.* Whenever a board, commission or other body shall have power to appoint an administrator, director or other chief executive, such appointment shall be made with the approval of the Governor.

The Constitution of the State of New York embodies a sentence similar to the one proposed.

From the Constitution of the State of New York:

"DEPARTMENT HEADS. The head of the executive department shall be the Governor. The head of the department of audit and control shall be the Comptroller and of the department of law, the Attorney-General. The head of the department of education shall be the Regents of the University of the State of New York, who shall appoint, and at pleasure remove, a commissioner of education to be the chief administrative officer of the department. *The head of the Department of Agriculture and Markets shall be appointed in a manner to be prescribed by law.* Except as otherwise provided in this constitution, the heads of all other departments and the members of all boards and commissions, excepting temporary commissions for special purposes, shall be appointed by the Governor by and with the advice and consent of the Senate and may be removed by the Governor, in a manner to be prescribed by law."

THE ESTABLISHED PROCEDURE FOR THE ELECTION OF MEMBERS OF THE STATE BOARD OF AGRICULTURE AND THE APPOINTMENT OF THE SECRETARY OF AGRICULTURE

(As provided by the Revised Statutes, amended by the Laws of 1944)

Annual convention to elect members:

¹ Distributed to all delegates in the form of a brochure, "A Message to the Official Delegates of the State Convention for Constitutional Revision," dated June 12, 1947. The brochure noted that the Society was a 166-year-old New Jersey farmers organization, incorporated February 22, 1840, by act of the Legislature under the original Constitution of New Jersey. Special type, illustrations, a map, membership and membership analysis contained in the original brochure, are omitted.

"At a convention to be held once in each year in the State of New Jersey, delegates chosen as provided*** shall assemble and elect, by a majority vote of the delegates present, *two farmers* to be recommended to the Governor for appointment to the board, with the advice and consent of the Senate, to fill the vacancies caused by the expiration of terms of office."

Organizations having representation:

"Each of the following organizations shall be entitled to be represented in the annual convention by two delegates: each county board of agriculture, the New Jersey State Horticultural Society, the New Jersey State Poultry Association, Jersey Chick Association, the American Cranberry Growers' Association, the New Jersey State Grange—Patrons of Husbandry, the New Jersey Association of Nurserymen, the United Milk Producers of New Jersey and the New Jersey Florists' Club.

Each of the following organizations shall be entitled to be represented in the annual convention by one delegate: the state agricultural college, the state experiment station, each Pomona Grange, Patrons of Husbandry; North Jersey Society for Promotion of Agriculture, New Jersey Guernsey Breeders' Association, Incorporated, Holstein Friesian Co-operative Association of New Jersey, the E. B. Voorhees Agricultural Society, the New Jersey Field Crop Improvement Cooperative Association, New Jersey State Potato Association, New Jersey Beekeepers' Association, the Co-operative Growers' Association of Beverly, New Jersey, and the Blueberry Co-operative Association of New Jersey."

Certification to Governor of names of members-elect:

"The Secretary of Agriculture shall certify the names of those elected by the convention to the Governor for appointment, with the advice and consent of the Senate, and for the issuance of commissions for the term for which each has been chosen."

Secretary of Agriculture: Appointment:

"The Secretary of Agriculture shall be appointed by the board, with the approval of the Governor."

NO RESPONSIBLE ORGANIZATIONS DESIRE TO CHANGE THE PRESENT METHOD OF SELECTING MEMBERS OF THE STATE BOARD OF AGRICULTURE

1. The State Board of Agriculture was organized by law in 1872 and is over 75 years old. It is the oldest state board of agriculture in America.
2. Election and appointment to the board has become an honor and reward to successful and public-spirited farmers who have given tirelessly of their time in the interest of agriculture.
3. The board members serve without compensation.
4. Never has politics entered into the selection of board members.
5. New Jersey's law is recognized by all other states as providing the most ideal method for selecting a board to formulate the policy for a department of agriculture.
6. The board and the department have the respect and confidence of the farm people, principally because of the method by which they are organized.
7. The state board is part of the whole farm organization set-up in this State—granges, farm bureau, commodity associations and

particularly county boards of agriculture, none of which is political.

The farm organizations want the State Department of Agriculture continued as set forth under the Revised Statutes.

NEW JERSEY STATE GRANGE
OFFICE OF THE MASTER
149 Main Street
Vincentown, N. J.

My Dear Delegate:

The 20,000 families of the farms and rural communities of this State making up the membership of the 120 subordinate granges of New Jersey voted "No" on their ballots at the fall election of 1944 on the issue of constitutional revision. Their major reason for this action was the fact that the revision as presented to the voters would have taken away from the agricultural interests their direct representation as provided in the Frelinghuysen Act.

Farmers look to the Department of Agriculture for sound marketing projects and disease control programs. These activities, so essential to successful farming, must not be handicapped by a politically controlled department.

The granges of this State urge the delegates to recognize the wishes of our membership and to write into the proposed Constitution the suggested safeguards which will assure a State Department of Agriculture free from politics.

Respectfully yours,

FRANKLIN C. NIXON, *Master*

Avoid the opposition of rural voters by continuing the State Department of Agriculture on the basis of the law approved by the Legislature of 1916 and amended in 1944.

NEW JERSEY FARM BUREAU
THE FARMHOUSE
168 West State Street
Trenton 8, New Jersey

To the Constitutional Delegates:

The State Department of Agriculture has not only commanded the respect of all the farm people and the support of the farm organizations of this State, but of the consuming public as well. This is because of the excellent services this department has given throughout the years.

The work of the department is mainly regulatory. It must be free, therefore, from favoritism and political pressure to insure the proper service to the farmer and to agriculture generally.

One of the reasons the New Jersey Farm Bureau opposed the revision of the New Jersey Constitution in 1944 was because that proposal placed the administration of the Department of Agriculture under partisan political control and took the selection of board members away from farmers.

The farm people of this State will continue to oppose any constitutional revision which would change the present method of selecting board members as now outlined by legislation.

Yours very truly,

HERBERT W. VOORHEES, *President*

SINCE ITS ORGANIZATION IN 1872 THE NEW JERSEY STATE BOARD OF AGRICULTURE HAS SERVED EFFECTIVELY AND WITHOUT CRITICISM

Year after year, the farm organizations of the State have fulfilled their obligations under the provisions of the laws of 1872 and of 1916, by selecting outstanding farmer representatives to serve on the State Board of Agriculture.

Because of their character and ability the members of the board always have enjoyed the full confidence both of the individual farmers and the citizens of the State. Not only has representation been provided for all sections of the State and for each commodity group, but every state-wide problem affecting the welfare of agriculture has received fair and impartial consideration.

Under the present plan, which provides for selecting two farmer members at the annual convention of delegates, the State Board of Agriculture and, under its direction, the State Department of Agriculture have established long-standing records of efficient service.

Beginning in 1872 with provisions for checking the analysis of fertilizers sold to New Jersey farmers, many contributions to the betterment of New Jersey agriculture have been made by the board, including the establishment of the State College of Agriculture and the Agricultural Experiment Station. The board sponsored the organization of the county boards of agriculture and set up the farmers institute programs to disseminate among farmers the findings of research.

In more recent years the board and the department have promoted cooperative marketing and purchasing enterprises, introduced grading practices, directed control measures for insects and plant diseases, supervised bovine tuberculosis eradication and other animal disease campaigns, improved poultry breeding stock, conducted surveys and compiled statistics, and sponsored many other activities which have won for New Jersey a high rank in the agriculture of the nation.

This record of service, extending over a period of more than 75

years, is acknowledged by impartial observers to be the result of the time-tested and proven method provided by the present law under which the farmers themselves have selected the members of the Board of Agriculture.

How the plan functions

The New Jersey plan for choosing members of the State Board of Agriculture—as authorized by the Legislature in 1916 and brought up-to-date in 1944)—provides a direct and democratic procedure for the designation of 81 delegates who assemble at the annual Agricultural Convention in Trenton.

The map, showing the origin of the delegates attending the 1947 Agricultural Convention held in Trenton last January, indicates how the plan provides state-wide representation.¹

¹ The map is not reproduced.

STATEMENT OF VARIOUS FARM ORGANIZATIONS ON CONTINUING THE PRESENT METHOD OF APPOINTMENT OF FARMERS TO THE STATE BOARD OF AGRICULTURE

THE PURPOSE OF THIS BRIEF

1. To urge the Executive Committee of the Constitutional Convention to include a provision in the proposed revised Constitution which will retain the present method of nominating farmers for the Governor's approval and presentation to the Senate, for membership on the State Board of Agriculture.
2. To encourage acceptance on the part of rural people of the proposed revision of the Constitution.

HOW IT CAN BE DONE

1. In that paragraph which relates to setting up boards and departments, the following sentence is suggested: "Members of the State Board of Agriculture shall be selected as heretofore provided by law."

REASONS WHY THE PRESENT METHOD OF SELECTING MEMBERS OF THE STATE BOARD OF AGRICULTURE SHOULD BE CONTINUED

1. *Farmers do not want to break with tradition that has proved successful.*

The farmers want to continue the present successful set-up of the State Board of Agriculture, which dates back to 1872 and was reorganized in 1916 by law to set up the agricultural convention idea of electing two farmers to the Board of Agriculture for a period of four years and certifying these names to the Governor for submission to the Senate for approval.

During all these years there has never been a criticism as to the programs which they have inaugurated or the manner in which these programs and projects were carried out. The convention idea assures the farm people that the Board of Agriculture will be headed by men with the reputation of being successful farmers and having the endorsement of the commodity producers whom they represent on the board because of their character, ability and reputation in their communities and among the producers of the commodity which they represent. It also assures that the board will be made up of members representing every section of the State, and, secondly, will also represent the important agricultural commodities making

up New Jersey agriculture. It would be most unfortunate if the board members came from one section of the State or represented just one commodity, such as milk.

Because the department has given a real service to agriculture, without criticism from anyone, it can truthfully be said that there is no group of citizens in New Jersey who are interested in changing the present arrangement. There is no opposition to the present set-up or method of electing members to the board, by either the Legislature, the Governor, or any other group of people.

2. *The New York State Constitution contains a similar clause.*

The New York State Constitution has a clause under "Department Heads" as follows: "The head of the department of agriculture and markets shall be appointed in a manner to be prescribed by law." If New York State could write such a phrase in their Constitution to protect the agricultural interests, then it seems that our proven successful way of electing board members should be incorporated in our proposed Constitution.

3. *It would be to the interest of the Governor.*

Not only is it important that the type of board that our rural people are directly interested in should be protected, but also it is to the interest of the Governor that the present convention idea should be continued.

First, from the standpoint of a friendly Governor, it will protect him from appointing members to the board from among his friends, politicians and interested hobbyists, such as the rich man who contributes to the campaign and has a hobby of agriculture and would desire to have the honor of sitting on the Board of Agriculture. Such a type of person would not make much of a contribution to the administration and policy-making of the department.

Secondly, in the case of the unknowing Governor, the convention idea prevents him from putting interests on the board that are not particularly sympathetic to agriculture and might have a certain interest to promote.

4. *Facts prove the present method is justified.*

To illustrate and prove the worth of our board, census figures indicate that in 1916, when the board was reorganized and the Department of Agriculture was set up under it, the gross income to our farmers of New Jersey amounted to approximately \$60,000,000 per year. The gross income of our farmers for the year 1946 is estimated as \$265,000,000. We have about the same number of farms (25,000) as we had in 1916. This growth and increased income are due to an extent to the

fact that our agriculture has been stable and many of the projects which the department has inaugurated during these years have resulted in this expansion. One of the most important contributions has been the development of city and auction markets, affording our farmers an opportunity to control the marketing of their products to best advantage, this in turn assuring our farmers of a method of selling which has allowed them the freedom to concentrate on production problems.

The average gross income per acre in New Jersey is the highest of any group of farmers in America. Where the gross income per acre in Pennsylvania and New York approximates \$15 to \$16, in New Jersey the gross income is \$55 an acre. It is necessary that our agriculture continue at this high rate of income per acre, inasmuch as our farmers' land and buildings require higher capitalization and taxes run four times higher than in competing out-of-state areas, and to assure our farmers a good standard of living.

Respectfully submitted,

FRANKLIN C. NIXON, *Master*
New Jersey State Grange
H. W. VOORHEES, *President*
New Jersey Farm Bureau
THOS. L. LAWRENCE, *Manager*
United Milk Producers of N. J.
C. T. DARBY, *President*
N. J. State Poultry Ass'n.
HENRY W. BIBUS, JR., *President*
N. J. State Potato Ass'n.
TUNIS DENISI, *President*
N. J. State Horticultural Soc.
CHAS. H. CANE, *President*
N. J. Agricultural Society

(Presented July 1, 1947)

MEMORANDUM OF NEW JERSEY FARM
BUREAU AND NEW JERSEY STATE GRANGE
RELATING TO INDEPENDENCE OF THE
DEPARTMENT OF AGRICULTURE ¹

In our earlier communication, we referred to the desirability of continued independence of the Department of Agriculture. In our memorandum to the joint legislative committee, July 22, 1942, we discussed this subject, as follows:

"The Department of Agriculture is neither an administrative nor an executive agency. It is not a state agency of any kind. It is a private, independent corporation. It bears no greater relationship to the State than any other private corporation organized to render some specific service of a public nature, and for which the State contributes to its support. It has a distinctive name, a common seal, a private membership, representative government, continued succession—all the attributes of a corporate entity.

Private corporations for public service are numerous; they take on various forms, some being more closely related to the State than others. But all independent of the State. Among these we now have the Port Authority, the several bridge commissions, of one type. There are the several agricultural societies, which supply the membership of the State Board of Agriculture, representing another type; and there are voluntary firemen's associations, exempt firemen's associations, detective associations, of a third type; drainage corporations, civic improvement societies, of still another type. Or is it intended to include all such corporations in the regrouping? If so, they should be advised of it. All are private corporations, composed of private individuals, privately designated and organized by legislative enactment for the purpose of rendering service of a public nature.

In the case of agriculture, to change this time-honored form of organization in New Jersey would be to work a definite injury to agriculturists, one which it is our duty to say they would resent with all their energy."

We desire to reaffirm that which was there said, and in addition advise that the freedom of the department from political association not only is its greatest asset but has established an organization ideal emulated by agriculturists in many states and envied by perhaps all others. There is no doubt of the preeminence of our Department of Agriculture. We are sure that it is in very large measure due to its structure, and we would feel ourselves grievously wronged if there should be done anything to interfere with the independence of that structure.

NEW JERSEY STATE GRANGE
FRANKLIN C. NIXON, *Master*

NEW JERSEY FARM BUREAU
HERBERT W. VOORHEES, *President*

¹ These two organizations also submitted a joint statement to the Convention and the public, published before the Convention opened on June 12, 1947, on the subject of constitutional revision generally.

RESOLUTION OF THE NEW JERSEY ASSOCIATION OF CHOSEN FREEHOLDERS

(Approved at Trenton, N. J., August 4, 1947)

WHEREAS, the traditional public service of the several boards of chosen freeholders in the State of New Jersey has resulted in economic and sound business-like government; and

WHEREAS, these several boards have been responsible for the development of a wide range of public services to the citizens, such as health, veterans, old age assistance, library, farm and school aid; and

WHEREAS, the primary arteries of communication, the county road systems have been designed and developed in unparalleled engineering skill and for the public good;

NOW THEREFORE BE IT RESOLVED, that the offices of the county freeholders in the State of New Jersey shall be hereinafter made and declared by the State Constitutional Convention meeting in New Brunswick assembled, to be an office of guaranteed constitutional responsibility; and

BE IT FURTHER RESOLVED, that these duly elected public officials shall have the full assurance of public trust embodied in the basic charter of the people's government.

Respectfully submitted:

ROBERT L. ADAMS, *President*

CHARLES R. STOUT, *Secretary*

ANDREW MCINTYRE, *Asst. Secretary*

Attest

RECOMMENDATIONS OF THE NEW JERSEY CHAMBER OF COMMERCE

The State Chamber concurs in the proposal to extend the Governor's term of office from three to four years and endorses the proposal that a Governor be permitted to succeed himself once.

The Chamber recommends that the new Constitution should require more than a majority vote of both Houses of the Legislature to over-ride a Governor's veto of any bill.

MEMORANDUM IN BEHALF OF THE NEW JERSEY CIVIL SERVICE ASSOCIATION, INC.

Clauses to be inserted in the proposed Constitution for the State of New Jersey in Article dealing with civil service of the State and all of its civil divisions, including any county, city, town, township, village, borough, municipality governed by a board of commissioners, or improvement commission, or school district thereof, and any agencies thereof.

Two clauses¹ dealing with this subject have been submitted by this Association. The first known as Clause No. 1, provides as follows:

"TITLE

A Clause Establishing Merit as the Basis of Civil Service in the State and its Civil Division and Agencies

RESOLVED, that the following be agreed upon as part of the proposed new State Constitution:

In the service of the State and civil divisions thereof, including any county, city, town, township, village, borough, municipality governed by a board of commissioners, or improvement commission, or school district thereof, and any agencies thereof, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions 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; except that preference in the appointment of persons who have been or shall have been in active service in any branch of the military or naval forces of the United States in time of war may be created by law.

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 of any person holding any civil office, position or employment in the service of the State and civil divisions thereof, including any county, city, town, township, village, borough, municipality governed by a board of commissioners or improvement commission, or school district thereof, and any agencies thereof, at the time when the same is adopted or takes effect."

The second, known as Clause No. 2, provides as follows:

"TITLE

A Clause Establishing Pensions in the State and Its Civil Divisions and Agencies.

RESOLVED, that the following be agreed upon as part of the proposed new State Constitution:

Membership in any pension or retirement system of the State and of any civil division thereof, including any county, city, town, township, village, borough, municipality governed by a board of commissioners, or improvement commission, or school district thereof, and any agencies thereof, shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

It is respectfully submitted that both of these should be part of

¹ Adopted by the State Council of the Association on May 17, 1947.

the Constitution. Indeed, there would seem to be no argument to the contrary. The Constitution of the State of New York, *Article 5, Section 6*, is in substantially the same language as Clause No. 1, *supra*.

Time and experience have proven that the best interests of the State and its subdivisions and the public are served by having the officers and employees in public and civil service protected in their offices and positions. Such protection gives the individuals thus employed security and an incentive to give their best service to their employers. On the other hand, the protection thus given does not prevent the discharge of the individual for incompetence or failure to properly perform the duties imposed upon him and because the law is settled that an employee may be removed at any time for cause or for the sake of economy.

That the merit system thus established and popularly termed civil service is held in high favor by the overwhelming majority of the electorate is proven by the votes recorded down through the last 37 years since the courts ruled that the Legislature in 1908 did not mandate its (civil service) acceptance upon counties and municipalities. Referenda submitted since that decision show that 78 per cent favored this system for public employees while 22 per cent voted against. Political organizations were almost entirely responsible in most cases for the opposition; despite this the voters registered their desire that merit and fitness should insure security and tenure to employees of the government.

The State of New Jersey has been cited time and again as the keystone in the arch of civil service in the United States. Our legislative acts and statutes and *modus operandi* for administering the merit system have been adopted in a great many states of the Union.

In fact, from our Civil Service Trenton offices have gone many of our best men to head Civil Service in the States of Michigan, California, Indiana, Illinois, Maryland, and numerous cities. There are, of course, some differences in procedure, as, for instance, in New York where civil service as stated above, is provided for in the constitution and where there are local commissions, while in our own State we have had a central board applying the laws in all jurisdictions.

May I point out that all of the larger counties are operating under the system; likewise all of the larger municipalities, with very few exceptions. For statistics may I point to the following: The entire state service under the Civil Service Act has a population of 4,160,165. The population of the counties which have adopted civil service is 3,774,781. This figure represents 90.74 per cent of the entire State. The population of municipalities which have adopted civil service is 2,735,795. This figure represents 60.76 per cent of the entire State. The counties operating under the merit system include

Atlantic, Bergen, Burlington, Camden, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Union and Warren. Municipalities which have adopted the merit system include Asbury Park, Atlantic City, Bayonne, Belleville, Bloomfield, Boonton, Burlington, Butler, Camden, Clifton, Dover, East Orange, East Paterson, Elizabeth, Fairlawn, Fort Lee, Gloucester City, Hackensack, Hackettstown, Hamilton Township, Harrison, Hoboken, Irvington, Jersey City, Kearny, Lakewood, Landis Township, Lavallette, Linden, Long Beach, Margate City, Millburn, Montville, Morristown, Mount Holly, Newark, Newark School Board, North Arlington, North Bergen, Nutley, Ocean City, Orange, Park Ridge, Parsippany, Far Hills, Troy Hills, Paterson, Plainfield, Point Pleasant, Pompton Lakes, Rahway, Ridgewood, Riverside, Rutherford, Seaside Heights, Sea Side Park, South Orange, Teaneck, Trenton, Union Township, Ventnor City, Verona, Vineland, West New York, West Orange, Woodlynne, Woodridge—surely a definite coverage of the existing faith in the merit system.

In addition, the following will shortly come under civil service: Union City, Weehawken, Bordentown, Lodi and Hunterdon County.

I do not believe that further facts or proof are required to justify action in placing all public employees under a constitutional provision that they shall be continued in their positions or employments under the civil service laws of our State.

All students of government recognize that the founders of the nation clearly were of the opinion and laid down the rule that the menace to honest administration lay in the building up of political machinery by use of patronage.

Our really great political leaders, however, down through the years have time and again shown that public service should be separated from the spoils-seeking groups. This brings up another question now before the Convention. Should the Governor be allowed by the Constitution to succeed himself? Our hard-headed forefathers with real foresight framed our present Constitution in such a way that the Governor or sheriff of a county should not serve more than one term. The reason given by them was that an opportunity should not be afforded for powerful officials to organize control of the functions of service to the injury of the freeholders and citizens of the State.

Time has proven that there are disadvantages to not permitting the Chief Executive to succeed himself, and for that reason we favor continuance in the executive office, provided that he be protected from influences that would create through use of patronage powerful political machinery and groups by placing all employees in civil service, thereby separating them from removal, except for cause. To repeat, the merit system has already been proven the best for

the citizens and the taxpayers and the employee, and it is a protection not only to the employee and the public but also to the elected official from coercive attacks by predatory, office-seeking incompetents.

It insures continuance in office and position by the experienced and trained servant from election upheavels. As stated, it gives security to the employee, provides opportunity for the selection of the best fitted to obtain governmental jobs, and gives to the men and women who served our government in defense of our nation the preference to serve that government in times of peace. It affords non-partisan checks on employees and officials alike.

It is respectfully submitted that since it has already proven its value and since it has so overwhelmingly been endorsed by the voters, it unquestionably is the one distinct provision for government that should be made part of the Constitution.

The 39th Annual Report of the New Jersey State Civil Service Commission (1945-1946) is a revelation with respect to civil service as presently adopted and administered in this State. If it is examined it should be remembered that the introductory page B should be changed, because since the publication of that report the population of municipalities which have adopted civil service has increased from 2,479,172 to 2,735,795, as heretofore set forth.

Dated: July 25, 1947

EDWARD A. MARKLEY,
*Counsel for New Jersey
Civil Service Association*

RECOMMENDATIONS OF NEW JERSEY COMMITTEE FOR CONSTITUTIONAL REVISION

*(Excerpts from the Committee pamphlet "Constitutional
Changes," May 1947)*

* * * *

- I. AN EFFICIENT AND RESPONSIBLE EXECUTIVE DEPARTMENT.
 - A. Elect Governor for four years, in odd years. A Governor to be permitted to succeed himself once.
 - B. Strengthen his veto power by requiring two-thirds vote to override any veto, and giving him more than five days to act.
 - C. Give him the power
 - (1) To require information in writing from department heads.
 - (2) To investigate state and local officers and agencies.
 - (3) To remove state officers for cause, after hearing.
 - (4) Seek appropriate court action to require compliance with the Constitution or laws by any state or local public officer or body.
 - D. State Administration.
 - (1) Limit number of state departments (not over 20).
 - (2) With a few possible exceptions, departments to be headed by single commissioners appointed by Governor for terms corresponding to his own.
 - (3) Give the Governor the initiative, subject to legislative review, to allocate functions and agencies among the departments.
 - E. Provide for executive budget and limit the power of the Legislature to increase or add to budget estimates or enact supplemental appropriations. Require a consolidated state fund and single fiscal year. (Not to include local taxes which are state-collected.)
 - F. Require Senate to act on nominations within reasonable time limit.
 - G. Provide that a state department head designated by the Governor shall act in his place immediately upon the occurrence of a vacancy or his temporary absence or inability, provided that the Legislature *may* elect a qualified person to replace such Acting Governor if the Governor be permanently separated from his office or if his absence or inability lasts more than 60 days.

* * * *

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.

EXPLANATION AND DRAFT OF
PROPOSALS BY THE NEW JERSEY COMMITTEE
FOR CONSTITUTIONAL REVISION
ON THE EXECUTIVE ARTICLE

STATEMENT ON STATE ADMINISTRATION

The proposed draft of clauses dealing with state administration is designed to carry out this fundamental principle, that all agencies and functions of state administration should be integrated and brought under the effective supervision of the Governor as a responsible administrative chief.

To this end it would write into the Constitution the following specifications, which are widely accepted as essential to a responsible system of public administration:

- (1) That there should be no more than 20 principal departments with which the Chief Executive must have direct dealings;
- (2) That the heads of all departments should be single executives, deriving their appointment and tenure from the Chief Executive;
- (3) That the initial responsibility for developing and maintaining an efficient organizational pattern should be placed squarely on the Chief Executive;
- (4) That the elected Chief Executive needs the assistance of a professional administrator if he is to be an effective administrative chief;
- (5) That the public should be bound by no administrative rules and regulations of which it has not been given due notice.

There are still defenders of disintegrated state administration, but it is hard to see how anybody who really believes that government ought to be responsible and responsive to the people can be among those defenders. It is hardly necessary to labor the point that the people generally are quite unable even to know the names of scores of independent state departments, agencies and establishments, differing widely in their structure, in the character and tenure of their heads and in the lines of authority between them and the elected representatives of the people. If disintegrated state administration can be defended at all, it must be not on the ground that it facilitates popular control, but on the opposite ground that it puts a large part of the public business beyond the reach of the ordinary instruments of popular control.

The question boils down to a choice between two concepts of State Government: (1) that it is essentially a single enterprise to be conducted in all its parts so as to be directly responsive to the needs

and desires of the people of the whole State; or (2) that it is a collection of relatively unrelated services, functions and controls, each of which should be responsive primarily to an especially interested constituency or segment of the public.

Perhaps the latter concept might be acceptable either in an age in which the government performed very limited functions or in a community with unlimited means for supporting public services. The people of New Jersey are living in neither of the utopias suggested. State Government is a big business. It exerts important influences and controls over all the people. It involves so much expense that the people must be concerned about it, and it is in direct competition with the Federal Government and with private enterprise for means of support.

The conclusion seems inescapable that the times call for a system of state administration which can be controlled by the people acting as citizens, not as members of competing minority pressure groups.

If this is true, there may still be differences of opinion concerning details in the pattern most conducive to responsible state administration. There may be legitimate argument, in the light of experience, for minor exceptions to or aberrations from the basic pattern. But it is believed that most informed and disinterested opinion will support the essential principles of the plan outlined in the proposed draft.

To be more specific:

(1) The literature of public administration and the testimony of practical administrators have for some time agreed that 20 is an absolute maximum number of departments which a single chief executive can reasonably be expected to deal with, and that every effort should be made to keep the number as far below the maximum as possible.

(2) There is still heated controversy over the question of single *versus* plural heads for certain departments. Although most political scientists stand firmly for the single head, many people interested in particular services insist that some departments which require an especially high degree of disinterested professional competence, particularly departments which have a direct and intimate bearing on personal welfare and happiness, such as departments of welfare, education and health, should be "insulated" from ordinary political government by placing at their head boards composed of persons with long overlapping terms. Although it may for the time being be necessary to make some concessions to this point of view, particularly in the case of departments which are thought of as having had "good records" under collegiate management, it is believed that the better course would be to follow the proposed draft in making no exceptions.

It is hard to escape the suspicion that if it is a "good thing" to keep these departments out of "politics" it should be an equally good thing to keep other departments out of politics. All departments today require a high degree of technical or professional competence, which has to be and generally is measured by training and experience, not by political loyalties and affiliation. While few departments come in so direct and intimate contact with individual human personalities as do those of education and welfare, all departments of State Government have important impact upon individual persons and rights.

It may be true that "playing politics" with the welfare of children or other dependents may be more devastating, humanly speaking, than playing politics with highways or parks. But by the same token, people will be more interested in checking the evil effects of politics in the Welfare and Education Departments than in other fields. If these services are directly responsible to the Governor, the people at least know how they may correct evils if they find them, while under the disintegrated system people are frequently frustrated in their attempt to place responsibility and to secure redress of grievances.

If the maintenance of responsible government is important to the American system, then it is unwise to separate from the main stream of government those functions which are capable of arousing the most active human interest and concern. One of the most obvious results of the disintegrated system is that many people who devote much attention to particular departments or functions are wilfully apathetic toward others. Healthy democratic government cannot be maintained by this sort of two per cent citizenship.

While insisting that all departments should be headed by single commissioners directly responsible to the Governor, it is recognized that there are legitimate uses for boards or commissions: for advisory and inspectional purposes, to ratify administrative rules or regulations, to hear appeals from administrative decisions, perhaps to help explain and interpret a department or function to the public, and to act as channels of communication between interested segments of the public and the departments. But such functions can be performed by boards much more effectively and with much more singleness of purpose if those boards are not also charged with general administrative responsibility.

One function of a departmental board or commission might well be to make recommendations to the Governor of persons qualified to be head of the department, whenever a new appointment to that position is in prospect. But in any case, a board composed of persons with overlapping terms, generally giving part or leisure time to the business of a department, is simply not the kind of channel

through which a Governor can expect to maintain effective day-to-day contact and communication with the department.

It must be remembered that we have been discussing only the top of the department. It goes without saying that the work of the department must be carried on from day to day and year to year by permanent career people protected by workable personnel standards and rules. As a matter of fact, this kind of career service should include every employee in the department except the head and one or a very few immediate aids or assistants to him.

(3) The natural incapacity of the legislative body to do a good job of organizing and making adjustments in and maintaining a consistent and efficient pattern of administrative organization has been abundantly demonstrated by experience. There ought to be no further question about the propriety of making the Chief Executive initially responsible for administrative organization and reorganization. President Theodore Roosevelt once spoke of administrative organization as essentially an executive function. President Hoover, citing the consistent failure of Congress to bring about administrative reorganization in the Federal Government, asked that the power to act be conferred upon him "with the reservation of power of revision by Congress."

In 1937 the President's Committee on Administrative Management, composed of three of the most distinguished American students of public administration, Louis Brownlow, Charles E. Merriam and Luther Gulick, stated that "it seems clear that the Executive should always be held responsible not alone for the management of the executive departments, but also for the division of work among the major departments. To render the Executive truly responsible for administration and its efficiency, he must be required to accept the responsibility for the continuous administrative reorganization of the government." Again, the committee said: "the work of reorganization is a continuing task growing out of and intimately related to the day-to-day work of the executive agencies. It will require continuing attention. * * * In other words, the task of reorganization is inherently executive in character and must be entrusted to the Executive as a continuing responsibility." Since this report, limited reorganization of federal administration has been achieved by executive orders issued in accordance with successive reorganization acts passed by Congress.

Repeated thwarted attempts to achieve rational over-all reorganization of state administration in New Jersey and in other states indicate the applicability of these propositions to government at the state level. Even where state legislatures have done fairly substantial jobs of reorganization, these jobs have very seldom been complete. They have even more seldom been consistently maintained over a period

of years. Up to date, the most important recognition of this truth in a state constitution is to be found in section XII of the Executive Article of the Missouri Constitution, which reads: "Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane."

As far as internal departmental organization is concerned, it has been recognized for a long time that the best course is to leave it largely up to the chief executive, or to the department, which should amount to the same thing. The internal organization of many state departments in New Jersey and other states is still mostly prescribed by detailed acts of the Legislature. But examination of the more recent statutes indicates an increasing tendency to leave internal organization to executive discretion. Many state department laws, as in New York State for example, specify certain divisions or bureaus but give the head of the department the power to establish other divisions, to merge or combine divisions, and to allot functions and responsibilities among them.

Although the proposed draft goes farther than any present state constitution or administrative code in giving the Chief Executive an assured initiative in administrative organization and reorganization, it is an essentially conservative proposal. It gives the Governor no authority in this field which may not be revised by law—that is, by a majority of the Legislature if the Governor consents, or by a two-thirds vote of the Legislature if he exercises the right of veto. In one respect the power given to the Governor to reorganize state administration is not so strong as that of the President under the Federal Reorganization Act, because all of the President's orders stand unless disapproved by both houses of Congress.

To assure an initial reorganization conforming to the mandate of the Constitution, the Schedule provides that executive orders to establish the integrated state administration shall stand unless modified by law or disapproved by vote of two-thirds of the Legislature. In order to avoid the danger that some agencies may be left out of the integrated system, due to deadlock between the Governor and the Legislature, the Governor is given the power in the end to make any allocations that may be necessary, to stand until or unless altered by law or by subsequent order.

Once the initial organization has been completed the proposed Constitution would tend to discourage excessive inter-departmental shifts by making executive orders affecting two or more departments subject to veto by one house of the Legislature. On the other hand, strictly internal reorganization in a single department could be effected by executive orders which would stand unless disapproved

by a two-thirds vote of both houses. Finally, the right of the Legislature to give the Governor more discretion in this field, that is, to issue executive orders concerning state administration without submission to or review by the Legislature, is affirmed. Presumably the Legislature has this right today, and it should not be taken away by implication.

(4) An elected chief executive has a pretty onerous combination of political and administrative duties and activities. The people elect a governor primarily because they feel that he will bring to state affairs in general the kind of leadership or direction which they want. It is his duty to assert this leadership with the legislature on questions of policy and to translate it into the concrete terms of state administration. He is therefore both chief legislator and chief administrator. It would be futile to argue about the relative importance of these two roles. But concerning the importance of the administrative role, suffice it to recall Jefferson's dictum that "the execution of the laws is more important than the making of them."

The satisfactory execution of the laws, *i.e.*, administration, depends partly upon direction of policy, but it depends equally upon technical competence in organizing and manipulating men and materials in space. Few men have time or talent for expert attention to both aspects of the job. An elected chief executive therefore needs at his right hand an *alter ego* who is a competent professional administrator. Hence the proposal for an Administrative Assistant to the Governor. The State of Minnesota has given an impressive demonstration of the value of this office. It is undoubtedly only a matter of time before it will be accepted as a matter of course that any elected governor or mayor must have such an assistant. The "Model State Constitution" provides for one. The New Jersey Constitution should do likewise.

(5) Mandatory publication of rules and regulations affecting the public should not be a controversial matter. That such publication has not been provided for as a matter of course in all cases is merely a measure of the lag of which practically all public institutions are guilty, and an indication of the need for a constitutional mandate to do at once what everyone recognizes is right. The mandate written in the proposed draft would be self-executing because it provides that no rule would be effective until it had been published. But the provision could cause no such hardship as might result from a rigid constitutional requirement for a uniform system of publication of all kinds of rules of all agencies, because the Legislature and the Governor would be left free to adopt for each type of regulation the method of publication most appropriate to it.

In General

What has already been said should be enough to indicate that

there is nothing in this plan for state administration which leads to the unhealthy centralization of power or to irresponsibility in the Executive. Quite the contrary. As the makers of the United States Constitution recognized, irresponsibility is frequently the result of too little rather than too much authority. In many departments, New Jersey state administration is essentially irresponsible today because nobody whom the people can immediately reward or punish can really get at it. The Governor has often been relatively irresponsible for a number of reasons, including the fact that his incapacity to succeed himself has made it reasonable for him to cater to some other political power or authority than that of the people. Another reason is that he has had little or no authority over most of his supposed subordinates and consequently he has had to exercise such power as he chose to by guile and by barter or exchange of political favors rather than by open and straightforward acts in the public interest.

As Dr. George A. Graham, now chairman of the Department of Politics of Princeton, once wrote concerning the proposals of the President's Committee on Administrative Management:

"Integrated administrative organization is generally desirable to give effect to intelligent executive leadership, which is in turn necessary to permit most effective legislative action and to counteract the centrifugal forces in our unrepresentative representative bodies. This is the situation in the national government. But to create effective executive institutions of an integrated character, there must be a reasonably strong office of chief executive on which to build."¹

A little earlier in the article from which this is quoted Professor Graham had pointed out that in many states the office of governor lacks the characteristics necessary to a strong chief executive upon which a responsible, integrated administration could be built. He concluded that in such states constitutional reform is a "prerequisite to administrative reform." Accordingly, the proposal to make the Executive responsible for an integrated state administration is based upon the assumption that the position of the Chief Executive will be made sufficiently strong to bear this responsibility, and that no important segment of state administration will be excepted from the reorganization.

It is wrong to suggest that the proposals to strengthen the position of the Governor are at the expense of the Legislature. In the first place it is to be assumed that the position of the Legislature will be directly strengthened by giving its members longer terms, providing them with the opportunity to receive enough for their services as legislators to enable them to devote more attention to their public duties, and in other ways.

Actually, the transfer of the initiative in the matter of administra-

¹George A. Graham, "Reorganization—A Question of Executive Institutions," *American Political Science Review*, August 6, 1938.

tive organization and reorganization to the Governor, and the elimination of the Legislature from the business of appointing persons to administrative offices, would strengthen the Legislature, not weaken it. These changes would strengthen it because they would relieve it of responsibilities and powers for which no legislative body is by nature equipped. Since the Legislature is ill-adapted to the exercise of such responsibilities, the attempt to exercise them diverts its attention and energies from its proper duties as determiner of public policy and watchdog of the public interest. In so far as the Legislature under the present system is responsible for the disintegrated state of state administration and even for the choice of individual administrators, it is deprived of the capacity to be an impartial critic and an effective check on the administrative branch of government.

Finally, it will continue to be true that the Executive will not have a single cent of money or a single important substantive power which does not depend upon acts of the Legislature. Therefore, the Legislature will always be in a position to control or prevent any possible inclination on the part of a Governor to get out of hand.

Through a strong civil service law, the operation of which is carefully watched by the Legislature to eliminate all unnecessary political appointments, the Legislature would be able to cut the patronage power of the Governor to a fraction of its present size. Thus, at the same time that the dignity and responsibility of the Governor as the representative of all the people in the State is enhanced, the reduction or control of his peculiarly political power would be entirely up to the Legislature. This should dispose of the suggestion that the increased powers of the Governor would give him a whiphand over the Legislature and thus a control over the whole government. If this is not enough, it should be remembered that along with these proposals go others to strengthen the independent position of the courts and substantially to reduce, if not to eliminate, the patronage possibilities in the appointment of judges.

Finally, it should be remembered that in all of American history there is no record of any governor who ever even remotely threatened to become what might be termed a dictator through the exercise of his constitutional powers as governor. The governors who have come nearest to dictatorship have been among those who were hedged about by constitutional restrictions and entanglements which kept them from being responsible to the people in the full sense of the word.

The question at issue is not what the total power or powers of the government should be. The proposals for change in the Constitution would not increase the powers of the government. The question is whether those powers shall be assigned to persons or agencies

who can be identified by the people and held responsible by them, or whether they shall continue to be, as at present, distributed in such a planless fashion as to defy popular understanding and to be impervious to overwhelming public opinion, even as expressed at the next election.

Postscript on Department Heads

This statement and the draft to which it refers stand for the proposition that all departments should have single heads. It should be noted that the Committee for Constitutional Revision in its recommendations calls for not over 20 departments, to be headed, "with a few possible exceptions," by single commissioners. The Committee has never indicated upon what specific exceptions it would be most inclined to look with favor. The admission of "possible exceptions" is a compromise which recognizes the fact that many citizens who favor constitutional revision also favor retention of boards at the head of certain departments which have nationwide reputation in their respective fields. The Committee includes some people who wish to retain one or more of these boards, as well as many others who believe firmly that the board system is basically unsound and should be discarded.

In 1944 the majority of the Committee supported the proposed Constitution, which provided that "The head of each Principal Department shall be a single executive *unless otherwise provided by law*," with the further provision that if a board is put at the head of a department, any chief administrator appointed by it must be subject to the approval of the Governor. If any exception is to be made to the single head principle, this would probably be the most acceptable compromise.

DRAFT OF STATE ADMINISTRATION ARTICLE

State Administration: Department Organization, Administrative Rules, Administrative Manager

1. There shall be no more than 20 principal state departments, organized according to major purposes. Among them all administrative offices, agencies and instrumentalities of the State Government shall be allocated by law or by executive order, but the Legislature may provide by law that certain temporary commissions for special purposes, and specified authorities or agencies to conduct public projects or enterprises in and for limited areas or in cooperation with other governments, shall be outside the principal departments.

2. The Governor by executive order may from time to time organize, reorganize, consolidate, or divide principal departments and reorganize, consolidate, divide, allocate, or reallocate offices,

agencies, instrumentalities and functions, in whole or in part, within and among them in order to promote efficiency in the State Government. Such orders may provide for the transfer of necessary personnel, property and appropriation balances and the abolition and creation of administrative offices, positions and employments.

3. Unless otherwise provided by law, every such executive order shall be transmitted to each house of the Legislature while it is in session. An order which affects more than one principal department shall become effective 60 days after its transmittal unless it shall have been modified by law or disapproved by a majority of the members of one house. An order affecting only one principal department shall be effective 60 days after its transmittal unless modified by law or disapproved by resolution concerned in by two-thirds of the members of each house.

The Legislature may give immediate effect to an order by concurrent resolution, and it may by law authorize the Governor to issue orders to take effect without transmittal to or review by the Legislature. Any order to allocate an office, agency, instrumentality, or function which would otherwise not be allocated to a principal department shall remain in effect until changed by a subsequent order or by law.

4. The head of each principal department shall be a single executive who shall be appointed by the Governor to hold office at his pleasure. The Legislature may provide for boards or commissions of limited function to be incorporated in or attached to principal departments.

5. No executive order, or rule or regulation of any administrative department, office or agency, except those relating to internal organization and management, shall become effective until published as may be provided by law or by order of the Governor not inconsistent with law.

6. The Governor shall supervise the state administration and shall appoint an Administrative Manager of state affairs to hold office at his pleasure. The Governor may delegate any or all of his administrative powers to the Administrative Manager.

Schedule

On or before——the Governor by executive order shall create the principal departments in the State Government as provided for in this Constitution, and allocate the state administrative offices, agencies, instrumentalities and functions among them. Each such executive order shall be transmitted to each house of the Legislature while it is in session and shall become effective 90 days after its transmittal unless it shall have been modified by law or disapproved by a resolution concurred in by two-thirds of the members of each house. After——, the Governor shall issue any order yet needed to com-

plete the organization of the state administration, and such order shall remain in effect until changed by a subsequent order or by law.

CLAUSE ON THE FAITHFUL EXECUTION OF THE LAWS

The Governor shall take care that the laws be faithfully executed, and to this end shall have power, by appropriate action or proceeding brought in the name of the State in any of the judicial or administrative tribunals or agencies of the State or any of its civil divisions, to enforce compliance with any constitutional or legal mandate or restrain violation of any constitutional or legal duty or right by any officer, department, or agency of the State or any of its civil divisions.

CLAUSE ON THE GOVERNOR'S VETO

Every bill which shall have passed the Legislature shall be presented to the Governor; if he approves he shall sign it, but if not he shall return it with his objections to the house in which it originated. Any bill so returned by the Governor may be reconsidered and if two-thirds of all the members of each house shall agree to pass the bill it shall become a law. No vote to reconsider may be taken until the third day after the bill has been returned by the Governor, and the vote on reconsideration shall be by roll call and entered in the journal.

If any bill shall not be signed or returned by the Governor within 15 days after it shall have been presented to him it shall be a law in like manner as if he had signed it, except that if the house of origin shall be in recess at the end of the 15-day period, the Governor may sign the bill at any time during the recess or return it with his objections upon the reconvening of the house, and if the Legislature shall adjourn finally before the Governor has acted on a bill that has been presented to him less than 15 days before, it shall not become law unless the Governor sign it within 30 days after such adjournment.

The Governor may strike out or reduce items in an appropriation bill passed by the Legislature by appending to the bill at the time of signing a statement of the items to be stricken out or reduced and returning a copy of the statement to the house in which the bill originated. The Legislature may reconsider each item separately in the same manner as in the case of an entire bill disapproved by the Governor.

STATEMENT ON ACTING GOVERNOR AND FILLING VACANCY IN OFFICE OF GOVERNOR

There should be two primary objectives of any constitutional pro-

vision for an Acting Governor: (1) to assure continuity in the office; (2) to assure that the Acting Governor is qualified and represents substantially the same public opinion as the elected Governor.

Thirty-seven states provide for a lieutenant-governor, whose position is analogous to that of the Vice-President of the United States. The theoretical justification for this arrangement is that the lieutenant-governor, like the governor, is elected by the people and is chosen specifically to be the stand-in for the governor. As a matter of practical politics, however, this leaves a good deal to be desired. In the first place, the lieutenant-governor in most states is even more of a fifth wheel than the Vice-President of the United States. In the second place, the lieutenant-governor, very often, is not a person whom the people would have elected as governor. A lieutenant-governor is nominated, frequently, because he stands at the opposite poll, within the party, from the nominee for governor. Finally, fewer people vote for the lieutenant-governor than for the governor, and in a close race a lieutenant-governor of one party and a governor of another party may be elected. There is obviously no sense in turning over the office of an elected governor either temporarily or permanently to someone with whom he and the people who voted for him are out of sympathy.

There are eight states which put the presiding officers of the upper and lower houses first and second respectively in the line of succession.¹

This method of succession does not create a fifth wheel in the state government but the presiding officer of one house of the legislature is even less likely than a lieutenant-governor to represent the people who elected the governor. Only a very slight familiarity with New Jersey history is necessary to support this statement.

Arizona, Utah and Wyoming put the secretary of state first in line of succession. This again avoids the fifth wheel, but by no means assures a sympathetic stand-in or successor to the governor, unless the secretary of state is appointed by the governor.

The proposed draft attempts to meet the tests suggested above by giving the Governor the right to designate, in order of his choice, persons from his official family to act temporarily in his place or to take over automatically upon the occurrence of a vacancy. It is believed that this is the best way to insure continued occupancy of the Governor's office in a manner consistent with the mandate of the last gubernatorial election. This arrangement was suggested by the Constitution proposed in 1942 by the Hendrickson Commission,

¹ Florida, Maine, New Hampshire, New Jersey, Oregon, Tennessee, West Virginia. In Maryland the president of the senate or the speaker of the assembly succeeds to the office if a vacancy occurs during a recess, but the legislature is required at its next session to elect "some other qualified person" for the residue of the term.

which would have made the Commissioner of Taxation and Finance the successor to the Governor. It is believed that the present proposal is preferable because the Commissioner of Taxation and Finance might not be the department head best qualified to act in place of the Governor.

Since 1844 there have been only three vacancies in the office of Governor in New Jersey which lasted more than a few days. On the other hand, the temporary absence of the Governor is a frequent occurrence. Normally, therefore, provision for a satisfactory person to act in the temporary absence of the Governor is more important than a provision for someone to take over in case of a vacancy. This fact argues strongly for a stand-in who has the complete confidence of the Governor. Obviously, no one would better qualify on this basis than one designated by the Governor.

The draft provides that in case of a vacancy, or of the *protracted* absence or disability of the Governor, or of the temporary disqualification of a Governor under impeachment, the Legislature in joint meeting may, if it wishes, appoint some qualified person to take over the office of Acting Governor. This would meet any doubt that might be raised concerning the propriety of putting an appointee of the Governor in the office for a protracted period without any possible review except by impeachment. It is believed, in any event, that either designation by the Governor, the elected representative of the whole State, or election by joint meeting, is a more representative manner of choosing an Acting Governor than the present method of taking the person who happens, as a result of the custom of rotation, to be elected in a given year to preside over one house of the Legislature.

The draft also provides for a popular election to fill an unexpired term at the first general election not less than 60 days from the date when the vacancy occurs. This means that, at most, there could be only a little more than a year in which the office of Governor would not be held by a person elected by the people for that purpose.

In case of the failure of the Governor-elect to qualify into office, the newly elected Legislature is directed to elect an Acting Governor. In case of the failure of the Legislature to do this before the regular date for the inauguration of the Governor, the Governor or Acting Governor is continued in office until a new Governor shall have been elected and qualified.

In case there is no person designated by the Governor to take the office of Acting Governor, the President of the Senate or the Speaker of the Assembly is directed to assume the office temporarily and to call a joint meeting of the legislative houses within one week.

Finally, the Legislature is empowered to provide for any contingency not automatically covered by the Constitution.

CLAUSE ON ACTING GOVERNOR AND FILLING VACANCY IN
OFFICE OF GOVERNOR

The Governor by executive order shall designate heads of departments, in the order of his choice, to serve as Acting Governor in the event of a vacancy in the office of Governor or of the Governor's temporary disqualification, disability, or absence from the State, but in the event of the death, resignation, impeachment, or removal of the Governor or in the event of his disability or absence from the State for more than 60 days, the Legislature by a majority vote of all the members in joint meeting, may elect a person to take the office of Acting Governor until a new Governor has been elected or until the disability, absence, or disqualification of the Governor has ceased.

In the event of the death of the Governor-elect or of his failure to qualify into office, the newly elected Legislature, by a majority of all the members in joint meeting, shall elect a qualified person to take the office of Acting Governor until a new Governor has been elected and qualified or until the Governor-elect has qualified. If the Legislature fails to elect an Acting Governor prior to the beginning of the term, the outgoing Governor or Acting Governor shall be Acting Governor until the vacancy is otherwise provided for.

In the event of a vacancy in the office of Governor, a Governor to fill the unexpired term shall be elected at the next general election held not less than 60 days after the vacancy occurs. A Governor elected to fill an unexpired term may assume his office as soon as his election has been determined.

In case there is no available person already designated to take the office of Acting Governor, the President of the Senate or, if he is unable to act, the Speaker of the Assembly shall assume the office of Acting Governor and shall forthwith call a special joint meeting of the two houses of the Legislature to be held within not more than one week for the purpose of selecting an Acting Governor.

The Legislature may provide by law for any contingency affecting the tenure of the office of Governor not fully provided for by this Constitution.

CLAUSE ON INVESTIGATIONS
(To be included in Article on Public Officers)

The Governor, either branch of the Legislature, and the Chief Justice shall have the power, jointly and severally, to cause an investigation to be made of the conduct in office of any officer of the State or any of its civil divisions, and into the affairs of any office, department, board, bureau, or agency of the State or any of its civil divisions. Any person who shall refuse or wilfully fail to

obey any subpoena lawfully issued by such investigating body, officer, or agency, or who shall refuse to testify or to answer any questions relating to any matter under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to hold any public office, position, or employment. Any such position, office, or employment then held by him shall thereby be deemed vacant, and such person shall not thereafter be eligible for any public office, position or employment.

— JOHN E. BEBOUT, *Chairman*
Research and Drafting Committee,
New Jersey Committee for Constitutional Revision

July 3, 1947

PROPOSAL OF NEW JERSEY COUNCIL, STATE COUNTY AND MUNICIPAL WORKERS

310 Washington Street
Newark 2, N. J.

To the President and Delegates of the Constitutional Convention:

This independent union of New Jersey public employees, accepting the challenge of these momentous days which find our State revising her basic charter to better fit the needs of all her people, has expended much energy and time, in as statesman-like fashion as we know how, making representations before several of the Committees of the Convention on matters affecting the area of government and its employees.

We desire, here, to add one further plea for inclusion of a provision in the new charter which will go far toward the elimination or easing of strife and injustices now visited upon many public employees and the public within the State because, abusing the basically sound principle of "home rule," some few public officials and agencies are able to practice tyrannical absolutism in a "democracy in a republic."

The purpose of this clause, which we suggest may belong under Section IV of Article IV (Executive), is to provide an impartial method for bringing accurate findings of fact before the voters who have directly or indirectly entrusted the administration of a public agency to an official or officials whose subsequent administration has met with strong dissatisfaction on the part of the employees of that agency. Our faith in democratic processes leads us to believe that knowledge of the true facts or "the light of day" will suffice to bring about a fair settlement in any such cases, thereby removing the probability of strikes or other disruptions in the public employ—at the same time leaving final authority where it belongs, in the hands of the people, all the people.

PROPOSED CLAUSE

The Governor may cause an investigation to be made for impartial determination and publication of the facts in any instance wherein, in the opinion of the Governor, a controversy between any public employees and their employing agency (county, municipality, school district, joint board, commission, authority, or other public agency administering public funds, the administrators of which are elected or appointed, directly or indirectly, by the people) may threaten the welfare or safety of the people of the State served by that agency.

Sincerely and respectfully submitted,

GIBSON LE ROY, *Executive Secretary*

August 6, 1947.

LETTER OF NEW JERSEY MANUFACTURERS ASSOCIATION

Trenton, N. J.

July 29, 1947.

Honorable David Van Alstyne, Jr., Chairman,
Committee on Executive, Militia & Civil Officers,
Convention Hall,
Rutgers University,
New Brunswick, New Jersey

Dear Senator:

I have been very much interested in the work of the Committees of the Constitutional Convention and have appreciated the real time they are giving to the matter during this hot summer season. In connection with the work of your particular Committee, I had hoped to be able to attend the hearing today, but other business matters have made it impossible. I am therefore taking the liberty of writing a comment or two on the tentative draft formulated by your Committee.

In general, I am in hearty accord with strengthening the power of the Governor in order that he may assume and fulfill the duties of a real executive. I believe that the tentative draft carries out this idea and I am, in general, quite in favor of the draft. There are three items that I would like to refer to in particular, as follows:

1. I am very much in accord with the change in the provision for legislative overriding of a veto and am in favor of the two-thirds provision.

2. I am very much in favor of increasing the term of office of the Governor from three years to four years; the additional length of the term is advisable and the four-year length prevents the gubernatorial election from ever falling in the same year as a federal election. It is my personal opinion that it would be better to adhere to our present provision that a Governor may not succeed himself by election to an immediate second term. In other words, I do not personally favor the provision that a Governor may serve two successive full terms before being ineligible for immediate re-election.

3. I question the provision for the granting of pardons and reprieves. I think we put too much responsibility for such matters on the Governor. Presumably we have a proper court system for trial and judgment and it seems foolish, when a person may have been convicted by proper jury trial and court procedure, to per-

mit the Governor too easily to override the conviction by granting a pardon.

I question also provisions for the granting of paroles. In other words, I believe the pardon and parole procedure is of very great importance and has been much abused in many states, and I think I shall have to include our own.

With best wishes, I am

Sincerely,

H. W. JOHNSON, *President*

RECOMMENDATIONS OF THE NEW JERSEY STATE FEDERATION OF LABOR

* * * *

EXECUTIVE

ARTICLE V

1. *Term of Office for Governor*

We believe that the Governor should have a four-year term, with no limitation on the right to succeed himself in office.

A short term in office effectively prevents a Governor from carrying out the reforms on the basis of which he was elected to office. The prohibition against self-succession weakens or destroys the power of the Governor in the latter portion of his term of office.

We submit that the prohibition of self-succession is a reflection upon the intelligence of the electorate—a continuance of the aristocratic, oligarchic theories of Hamilton which, while theoretically declaring that "all power is vested in the people," practically deprives the people of exercising this power.

We have greater faith than this in the intelligence of the electorate. If a Governor performs his services capably and well, he should be retained in office. If not, he will be removed by the vote of the people.

2. *Appointment to Office*

We suggest that all appointments to state office should be made by the Governor, with the advice and consent of the Senate. The practice of election of some state officials by a joint session of the Legislature has proven to be undesirable, since in many cases it has produced the election of persons not properly fitted for the office.

3. *Governor's Cabinet*

We believe that the Governor should be enabled to appoint his own delegates to the high state offices which are policy-making in nature. We therefore recommend that all policy-making positions should be made co-terminous with the term of the Governor.

4. *Veto Power*

The Governor's veto power should be effective. We therefore suggest that a two-thirds vote of each house of the Legislature should be required to override a veto.

LETTER OF
THE NEW JERSEY STATE FIREMEN'S MUTUAL
BENEVOLENT ASSOCIATION

June 19, 1947

My dear delegate:

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.

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*

PROPOSAL 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*

BRIEF OF THE NEW JERSEY STATE MOTOR VEHICLE AGENTS' ASSOCIATION¹

In 1942 the State Motor Vehicle Agents' Association, in an effort to assist the Legislative Committee in its findings, submitted a brief covering the various constitutional articles which were then the subject of amendment.

Today we again feel, because of the strategic locations of the various motor vehicle agents throughout the State, that we can be of assistance to the Committees appointed by the President of the Constitutional Convention whose duties it is to formulate and crystallize the sentiment as presented at the public hearings of the Committees preparing the Executive Article and the Legislative Article.

We wish to bring to the attention of the delegates of the Convention that the men and women who conduct the affairs of the 142 motor vehicle agencies throughout the State are all representative citizens in their respective communities. Among them are bankers, automobile dealers, attorneys, insurance agents, realtors and merchants. These agents annually collect for the State of New Jersey, in the form of license fees, a total of approximately 23 millions of dollars, in addition to their own business enterprise or profession. In the administration of the motor vehicle agencies and in the conduct of their own business enterprise or profession, they come into contact daily with a large percentage of our citizenry.

Since the convening of the delegates to the Constitutional Convention the agents have made it their business to talk to the people of their communities. These opinions and suggestions have been secured, not by biased influence being exerted, but have been willingly offered by a most intelligent cross-section of our citizenry. These opinions and suggestions gathered by these agents are correlated herein and are offered for the purpose of assisting these Committees preparing the Executive and Legislative Articles.

It is the understanding of the Motor Vehicle Agents' Association that the Committee preparing the Executive Article is presenting the three following recommendations to the Convention, namely:

1. That the Legislature shall by law formulate departments of State Government not to exceed 20 in number.
2. That the Legislature shall by law formulate and designate the construction and duties of the various departments.
3. That the Governor shall have the power of appointment of the executive heads of all departments of government as set up and constituted by the Legislature.

¹ This brief, though also addressed to the Committee on the Legislative, is reproduced in this Appendix only.

We have no objection to the first two provisions. As a matter of fact, the opinions and suggestions gathered from the various agents throughout the State are entirely in accord with the first two proposals.

The sentiment as gathered by the agents on the third point is very much against the proposed provision. The consensus is definitely that the method of appointment of these various department heads should be vested in and determined by the Legislature and not locked by the proposed Constitution in the hands of the Executive.

It has been ably said that a democracy is a government of the people and by the people.

The Legislature of the State of New Jersey democratically represents the people of this State at large, because geographically all sections and parts of the State are represented in that body. The Legislature, by virtue of its organization, voices the opinion of peoples from all sections of the State of New Jersey, both urban and suburban, and are, therefore, in a much better position to advance the thoughts and ideas of the people of the State as a whole in a more constructive manner. The Legislature is vitally concerned with the type of executive that shall head the various administrative departments which affect their constituents and, therefore, should have the opportunity to say whether a certain individual is qualified to be in charge of a particular department.

We believe that the selection of an executive at the head of a state department by 81 members of the Legislature is a truer representative of democracy. We urge, in the interest of truer government representation, that the Legislature retain the power of appointing the various department heads in joint session. This recommendation is based on the fact that, as legislators, this body is in a better position to compile the sentiment as expressed throughout the State, and is, therefore, in a better position to determine who shall administer the affairs of the various state departments, which affects the people as a whole.

Furthermore, an administrative head elected under joint session must take into consideration that the activities of his office affecting the people in the State as a whole are subject to closer scrutiny due to the fact that any irregularity in the administration of his affairs, detrimental to the rights of the people, would soon be brought to the attention of the respective legislators from the county or counties so affected. The administrative head elected by joint session of the Legislature and responsible to it for his actions in office, will be under closer supervision in the performance of his duties.

Any administrative head appointed by joint session of Legis-

lature will be in a position to deal individually with members of the Legislature, resulting in the closer coordination between county and state government.

A legislator should give this particular section the most careful consideration, as he is the one who has the problems to dispose of from his respective county, and he is the one whom the people know and appeal to directly. His success will be determined by his ability to properly provide for the constituents of his county, wherein administrative heads are in a position to either grant or reject a request that may be very vital.

In view of the legislators' direct interest in all problems of civic and social nature affecting the citizens of the State, which fact cannot be denied, they should certainly be better versed in determining the wishes and requirements of the people of New Jersey and thus choose a man with qualifications to meet the existing needs. Therefore, instead of the appointive power of legislators being curtailed, this power should be extended.

The Legislature of this State, because of its inherent power, can always legislate to give the Governor the power of making certain appointments. We cannot understand, however, why a Legislature would endeavor to "shackle" itself by a constitutional limitation in this regard.

The Legislature, in making an appointment, would certainly give due consideration to the ideas and wishes of an honest and efficient Governor. The election of the Alcoholic Beverage Control Commissioner by the members of the current Legislature is a perfect illustration of a legislative appointment at the recommendation of an honest and efficient Governor. However, should the Legislature give away this right, they might find themselves at some future time, because of the constitutional limitation, in a position of remaining silent in the face of poor appointments by an unscrupulous Governor, who would have foremost in his mind the thought of developing, in the State of New Jersey, a bureaucracy and political machine which could not be broken down by the people's own representatives.

Some thought and consideration should be given to maintaining as much government as possible in the hands of the people through their elected members of the Legislature, in order to prevent the possibility of abuses on the part of an individual.

Will the provision of the third section, as proposed, guarantee to the people of New Jersey that the good will always prevail?

Have not administrative heads appointed by the Legislature in the past been honest, efficient and capable men? Why change now?

Does the Convention feel that the Legislature in the past has been negligent in appointing proper qualified administrators?

Does the Convention feel that the Legislature has not made appointments of administrative heads that have met with the favor of the people?

Conclusion

We most respectfully suggest and recommend that the power of appointing administration heads of State Government shall be a constitutional function of the Legislature, with the power to divert this authority to the Governor if conditions and time seem advisable and necessary for the orderly function of State Government.

Respectfully submitted,

N. J. MOTOR VEHICLE AGENTS' ASSOCIATION

GEORGE H. BUSS, *Pres. of State Assn.*

Member Ex-Officio, Union City, N. J.

GEORGE H. CONDIT, *Chairman,*

Newton, N. J.

WILLIAM C. GONCH,

New Brunswick, N. J.

THOMAS L. GLENN,

Atlantic City, N. J.

PHILIP S. IRONS, JR.

Mt. Holly, N. J.

JACK M. WALDOR,

Newark, N. J.

ANDREW LUSTBAUM,

Long Branch, N. J.

WILLIAM H. HOMAN,

Swedesboro, N. J.

CHARLES A. BRITTON,

Elizabeth, N. J.

WILLIAM BAKER,

Tenafly, N. J.

EMIL J. HABRICH,

Hackensack, N. J.

ISADOR ROBINSON,

Elizabeth, N. J.

RUSS ATKINSON, *General Agent.*

Dated, July 21, 1947.

RECOMMENDATION OF THE NEW JERSEY TAXPAYERS ASSOCIATION

REORGANIZATION OF STATE GOVERNMENT

A limitation should be placed upon the number of state departments through constitutional amendment, in the interest of economy and efficiency. The proposal of the Committee for Constitutional Revision that the State Government divisions be limited to 20 is hereby endorsed.

LETTER OF FREDERICK A. POTTER

Baldwin Avenue
Haworth, New Jersey

July 2, 1947.

Mr. David Van Alstyne, Jr.,
Chairman of the State Constitution Committee,
Executive Committee.

Dear Sir:

As the Constitution Committee is now rewriting the proposed Constitution of the State of New Jersey, and as you are a member of the Constitution Committee from Bergen County, I am writing to you in order to express several points in which I am naturally interested for your consideration and that of the delegates.

First and foremost, is that there should be some safeguard in the new Constitution to protect all veterans' benefits, and that can be done by inserting a protective clause somewhat on the following lines:

"Notwithstanding anything in the Constitution, the Legislature shall have the power to grant preferences, etc., to all those who have served honorably in the armed forces of the United States of America account of war."

In addition to the foregoing I wish to state that I am unalterably opposed to continuation in office of the Governor. The term should be extended to four years, and no Governor should succeed himself.

There is also another item pertaining to trust funds. Provision should be made for scrutinizing, either by the court or a special committee elected by the Governor with approval by the legislative body, these trust funds every five years to determine whether or not they have outlived their original intent. In such instances where it is determined that they have, necessary legal steps should be taken to invalidate the trust, apply the proceeds under state supervision to the maintenance and care of state and county homes for the aged and hospitals similar to Bergen Pine.

Your consideration and that of your associates will be appreciated by the undersigned.

Yours truly,

FREDERICK A. POTTER

LETTER OF I. GRANT SCOTT,
CLERK IN CHANCERY

COURT OF CHANCERY OF NEW JERSEY
Trenton, N. J.
I. Grant Scott, Clerk

July 2, 1947

The Honorable David Van Alstyne, Chairman
Executive Committee, Constitutional Convention
Rutgers University
New Brunswick, New Jersey

Dear Mr. Chairman:

Recent public expressions of opinion concerning the provision in the new Constitution regarding the term of office for the Governor, and the ensuing debate as to whether or not a Governor should succeed himself, have caused me to submit the following for your Committee's consideration.

While I do not presume to speak as an authority on this subject, I am merely offering certain conclusions which I have come to as a result of my own observations and knowledge acquired as a member of the Executive Branch of the previous Constitutional Revision Committee, and particularly of my experience and contact with four Governors while I was a member of the Legislature, majority leader and twice President of the Senate.

The strengthening of the Governor's prerogatives by the right of succession need not call for or demand subservience on the part of the Legislative Branch.

His ability to effectively initiate and bring to a successful conclusion a comprehensive program is often hampered by lack of sufficient time in any three or four-year period. He is often unable to obtain the services of outstanding, qualified men for so short a period of time because men of real ability and integrity, figuratively do not want to be mere "pinch-hitters." He should have the right to select his Cabinet members heading up key departments to serve concurrently with his term.

The effective success of such outstanding governors in political history as Al Smith, Herbert Lehman and Thomas Dewey of New York; Albert Ritchie and Herbert O'Connor of Maryland; Calvin Coolidge and Leverett Saltonstall of Massachusetts; and Raymond E. Baldwin of Connecticut illustrate the case in point. Is it not reasonable to suppose, too, that such outstanding Governors of New Jersey as Walter E. Edge and A. Harry Moore might have contributed even more notable achievements had they been permitted to

continue, through consecutive terms, many worthy projects and policies which they initiated?

To meet the argument of self-perpetuation in office, I am firmly convinced that where the Legislative Branch does not become completely subservient to the Executive, as was the case in the Federal Government during the years 1934-1941, the electorate today is sufficiently informed through the press, and manifests enough personal understanding, to turn out of office any political charlatan. Consequently, I am in hearty agreement with the provision of extending the term of the Governor to four years, with the right to succeed himself for one additional term.

I sincerely commend you and your Committee, Mr. Chairman, for the forthright manner in which you have considered the many proposals submitted. Yours is not an easy task, but the approach you have taken bespeaks your innate fairness and determination to produce a document truly representative of the considered views of the majority. May your labors not be in vain.

Sincerely,

I. GRANT SCOTT,
Clerk in Chancery

LETTERS OF FRANK H. SOMMER,
COUNSEL TO THE BOARD OF PUBLIC UTILITY
COMMISSIONERS

STATE OF NEW JERSEY
BOARD OF UTILITY COMMISSIONERS

July 25, 1947.

Honorable David Van Alstyne, Jr.,
Chairman, Committee on Executive, Militia and Civil Officers,
Convention Hall, Rutgers University,
The State University of New Jersey,
New Brunswick, New Jersey.

Dear Sir:

Reading Section IV of the Tentative Draft Proposals relating to the Governor, etc., leads me to submit the following questions and comments to the Committee.

The section relates to "all executive and administrative offices, departments and instrumentalities of the State Government and their respective functions, powers and duties." The words "executive and administrative" are undefined.

Is the Board of Public Utility Commissioners an "executive and administrative" office, department or instrumentality?

The board and other like regulatory agencies are commonly referred to in decisions as "administrative agencies."

However, the "functions, powers and duties" of the board, other than the duty of collecting filing fees, are not "executive and administrative" but are in the nature of legislative functions, powers and duties. To illustrate, the power after hearing, on notice, to fix "just and reasonable rates" for the future for public utility services is not "executive and administrative" but is legislative in nature. The other powers, functions and duties of the board are of like nature.

In fact, the board is a "policy making agency" working out and applying policies within the outlines of the functions, powers and duties broadly set by statute.

My answer to the question I have put would be that the board is not an executive and administrative office, department or instrumentality. Others will dissent from this opinion. The answer to the question is involved in reasonable doubt. Why not remove the doubt?

If what is purposed is to extend the provisions of Section IV to the board, I would submit the following comments for consideration.

The powers, functions and duties of the board are, as I have said, in nature legislative and judicial, involving policy-making within the limits broadly set by legislation.

If Section IV is applicable, the board and its functions, powers and duties will be under the "supervision and *control* of the Governor" and unless otherwise provided by law under the supervision and *control* of a "single executive" acting under the Governor, nominated and appointed by the Governor by and with the advice and consent of the Senate, serving at the Governor's "pleasure" during the Governor's term.

The "*control*" by the Governor and the "single executive head" under him is undefined.

Is it purposed that every determination by the board, some of which are reached after many months of hearing, shall be *controlled* by the Governor and the "single executive head" and be subject to executive veto and modification?

If so, nothing could be more violative of the purposed objective of the constitutional separation of governmental powers.

If so, of what avail is the provision of the statute establishing the board, that not more than two members of the board, "shall be members of the same political party"?

It is as important that the board be wholly free from executive "control" as it is that the courts be free from such control. The board's determinations must be impartial and uninfluenced. Into them political considerations and ulterior motives and purposes must not enter. The board can function effectively only as public confidence that it acts impartially is maintained.

The statute creating the board recognizes the necessity for assurance of impartiality. It provides that: "No member or employee of the board shall have any official or professional relations or connection with, or hold any stock or securities of any public utility * * * * * operating within this State."

This statutory inhibition would not be applicable either to the Governor or the "single executive."

If, under paragraph 3 of Section IV, the board is constituted the head of a principal department, these comments remain applicable, for the Governor's *control* remains unaffected and the executive officer appointed by the board is subject to the approval of the Governor.

As matters now stand under existing statutes, the board has an executive officer within the civil service.

The board has been stripped of authority to select its own counsel. If now it is to be subjected to executive "control," what measure of independent action will remain to it?

Forgive the length of this letter which is based upon almost 40 years of contact with regulatory agencies.

Respectfully,

FRANK H. SOMMER

July 28, 1947.

Honorable David Van Alstyne, Jr.,
Chairman, Committee on Executive, Militia and Civil Officers,
Convention Hall, Rutgers University,
The State University of New Jersey,
New Brunswick, New Jersey.

Dear Sir:

Supplementing letter of Friday, on Section IV of Executive Article.

Have been asked for suggestion as to how situation to which I called attention may be met.

I suggest that a paragraph somewhat as follows be added:

"The provisions of this section shall not extend to offices, departments or instrumentalities whose functions, powers and duties are in the main legislative or judicial in nature.

Classifications and allocations effected under this section shall not be subject to judicial review."

A clause along these lines would put doubt at rest and would prevent possible litigation over classification and allocation.

Respectfully,

FRANK H. SOMMER

COMMITTEE
ON
TAXATION
AND
FINANCE

RECORD
OF
PROCEEDINGS

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, June 24, 1947 ¹

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

The Committee on Taxation and Finance convened in Room 201, Rutgers University Gymnasium, New Brunswick, New Jersey.

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The Committee will come to order. The meeting this morning is for the purpose of seeing what might develop in the way of future committee hearings.

At the suggestion of Mr. Milton we invited the financial officers of the State. Unless some committee members have other matters to discuss at this time, I will address myself to Commissioner Zink [Commissioner of Taxation and Finance]: Are you familiar with what this Committee has specifically to refer to in the way of this Convention? We would like to have suggestions from you as to what we should develop from the standpoint of the State with regard to the financial points of the proposed Constitution.

Suppose, before you start, we ask you whom you have asked to come with you as representatives of the State Government.

MR. HOMER C. ZINK: I have brought with me Deputy Commissioner Walsh, who is Director of the Division of Taxation; William D. Kelly, Inheritance Tax Supervisor; Aaron K. Neeld; Donald Waesche, Director of the Division of Tax Appeals; James M. King, and Abram Vermeulen.

CHAIRMAN: We have also contacted the New Jersey State Chamber of Commerce. Is there anyone from the State Chamber of Commerce present?

MR. ALVIN A. BURGER: I am Alvin A. Burger, Director of Research of the New Jersey Chamber of Commerce.

CHAIRMAN: Is there anyone present from the New Jersey Taxpayers' Association?

¹ EDITOR'S NOTE: Due to mechanical difficulties at this opening session of the Committee there was some confusion in the preparation of these minutes. However, the original draft, prepared by Secretary John J. Rafferty, was reviewed by each of the speakers (except A. R. Everson, deceased). Acceptable corrections have been incorporated into the text. These corrections make no substantive changes in the original draft; they go to matters of style and clarity.

For the purpose of completing the record, there is included in the appendix to these minutes, the report of this meeting which appeared in the *Newark Evening News* of June 25, 1947.

MR. A. R. EVERSON: Yes sir, I am A. R. Everson, Secretary of the New Jersey Taxpayers' Association.

CHAIRMAN: Anyone else?

MR. JOHN F. O'BRIEN: I am John F. O'Brien, of the New Jersey Committee on Constitutional Revision.

CHAIRMAN: Are there any others?

(Silence)

CHAIRMAN: Would you feel more at ease, Commissioner Zink, if you were seated? Supposing you sit right here (*indicating chair*). This will be very informal because we are just feeling our way to see how much latitude we will have in what we want to cover in this Committee. If necessary, we will come to Trenton and give you whatever time we have. This is more of a development of a hearing. We will talk to the outside people next week, but you are not excluded after today. You will be heard again.

MR. ZINK: We shall have some concrete things to say later on. At the moment I would like to say this: I am convinced, as most people now seem to be convinced, that the new Constitution should be as brief, as simple, and as elastic as possible in all respects. Being Commissioner of Taxation, I am particularly interested in those elements which apply to the problems of taxation. I have no revolutionary ideas on taxation, nor for a tax clause for the Constitution, nor for any other clause. I do feel strongly, and so I repeat—the Constitution should be simple and short. The more flexible the Constitution, I think, the better it will be in all respects. I feel particularly that way after spending a day in Albany, and after talking to state officials and others who are struggling with problems up there. A verbose Constitution would be a big mistake. May I have a couple of minutes?

CHAIRMAN: Certainly. Is this on the record?

MR. ZINK: Yes. This is all on the record.

Some time ago the State of New York wanted to put a ski tow on property owned by it in the Adirondacks, and it was necessary to have the Constitution revised in order to do this! Right now they are in a mess up there because of what they call the "prohibition clause," which has nothing to do with liquor, by the way. The constitution was adopted in 1938 in the depths of the depression. They put in a clause which, in effect, provided that nobody could do business with the State except on a five-day week basis, as the State expected to work a five-day week from Monday through Friday. Of course, at the time, as I said, we were in the depression, and they thought there was an excuse for such a provision. To be sure, this has nothing to do with taxation, but it shows how things can go if the constitution goes too far. They are having all kinds of trouble up there now as a result of this clause, since business conditions are so good.

You can now see why I think we should have a brief, simple, and flexible Constitution. I am speaking particularly from the point of view of the Commissioner of Taxation. Admittedly there are clauses in our Constitution that are controversial and troublesome. I am familiar with the decisions, as most of you are—the trouble the high courts have had with the true value clause. There seems to be a pretty general feeling that that clause should be changed and there should be substituted a clause which, in general, should provide for the assessment of property in general by uniform rules, according to standards of value. I think that is a clause to be considered.

I feel very strongly that the clause in the Constitution which prohibits payments except upon appropriation by the Legislature should be continued—that is of the greatest importance.

There has been considerable talk about putting in the new Constitution provisions with respect to a single budget and a uniform year, and so forth. That, of course, we can consider, but my notion is that it is pretty well taken care of now, so perhaps we don't need to go into that. There are two things, I repeat, which need careful consideration: (a) the clause with respect to assessment and valuation; and (b) the clause with respect to payments of bills only upon appropriation by the Legislature. That is all I have to say at this time.

MR. MILTON C. LIGHTNER: Is it your intention to give the Committee the benefit of your suggestions as to the appropriate language for the revision of the assessment clause?

MR. ZINK: We will do that. We are having that studied now. That will be a controversial point. It has been a controversial point since 1776. We will be glad to state our views, but we would like to give it serious thought first.

MR. FRANK J. MURRAY: Have you any suggestions as to that clause, as to amending it or deleting it?

MR. ZINK: I haven't at this time. I have been reading this monograph of Mr. Neeld's, which you have.¹ I would like an opportunity to come again and discuss these things more fully. At this time I particularly want to stress what I have already stressed—simplicity and elasticity.

MR. JOHN MILTON: Have you any suggestions, Commissioner, as to the scope, extent and manner of an investigation or study by this Committee which would likely to be helpful to it?

MR. ZINK: You know that the State Tax Policy Commission has been making a survey for a long while and has filed two reports, which I suppose you are familiar with. Dr. Sly and Professor Miller have spent a long time and they have done a good job in investigating. I think it would be worthwhile to talk with them. All of us

¹ This monograph appears in Volume II.

here, and others in our Tax Department, would be delighted to have an opportunity to sit down with this Committee—either as a whole or a smaller committee—and give you the benefit of anything we may have with respect to matters which should be worked out at your meetings and legislation which should be considered by the Committee before writing clauses in the Constitution. We would not only be willing but delighted to sit in.

A great deal of work has been done in and out of the Legislature in the past two years in connection with the whole matter of the budget. Budgeting has changed completely.

CHAIRMAN: Would you and the other financial officers feel it feasible and proper, and almost necessary, to have the hearing in Trenton, and that you should be given several days of two or three hours or more?

MR. ZINK: I don't think it is necessary to have it in Trenton. It would be easier for us to come here.

CHAIRMAN: It would be just as easy for us to come to Trenton as here.

MR. ZINK: That is entirely a matter of convenience.

MR. JOHN J. RAFFERTY: Would it not be better for you from the standpoint of availability of records to have it in Trenton?

MR. ZINK: You might have it there if you think it convenient. We would be glad to have you. What I was thinking of is your convenience.

MR. RAFFERTY: It is difficult to cart the material around.

CHAIRMAN: We will make a regular time-table for the meetings for later on. We might put the hearings down for Trenton.

MR. ZINK: Perhaps I was talking out of order this morning. You may have been thinking particularly of a time-table.

CHAIRMAN: It appears this morning that you would like to have more records available. Is there any member of the Committee who would like to ask any questions?

MR. SIGURD A. EMERSON: Commissioner, I believe there is an exemption tax on intangibles. I think that tax bill was written by the Tax Commission. That is merely legislative action. Do you think it would be desirable to put a clause in the Constitution to exempt intangibles? Do you think it would be desirable from your point of view, Commissioner, to exempt this by legislation?

MR. ZINK: I certainly think not. I would hate to see things of that order come into the Constitution.

MR. ALLAN R. CULLIMORE: Anything that can be instituted by legislation should be done that way?

MR. ZINK: I think so. I say that as a result of seven years' experience in the Legislature and five years' experience in the administrative branch, plus some thinking of my own.

MR. FRANK E. WALSH: May I suggest that it might be well if we sort of conduct a round-robin survey of the bureaus in our Department to determine what, if anything, handicaps them because of what might be in the present Constitution, and we can set them up for discussion.

MR. ZINK: That's right. By the way, if you have time, I wish you would listen to Deputy Commissioner Walsh. He has been very close to the budget for six years, and I think you will find what he has to say of interest. This gives me an opportunity to speak of my association with him during the past few years while he had been Deputy Commissioner; our association has not been the case of "boss" and "employee" but a strict partnership, in which the State has benefited, and I personally have benefited.

MR. MILTON: Commissioner, I understand the term "boss" to show affection.

(Laughter)

CHAIRMAN: That is all Commissioner Zink? Thank you very much. I will ask Commissioner Walsh to take the stand.

SUMMARY OF TESTIMONY OF MR. WALSH:

The "true value" clause is troublesome in some matters. To bear this out Mr. Walsh stated that there had been numerous interpretations and court decisions regarding railroad tax assessments which have produced endless controversies. True value has been interpreted by the courts and defined as that value on which a willing buyer and a willing seller will agree in closing a transaction on property. In using that guide, he has had problems assessing railroads because of the lack of willing buyers and willing sellers for the sale of round-house equipment, railroad bridges, and things of that kind. It is more good luck than good management that the assessments made by the Tax Director and former Tax Commissioner have been upheld in the courts because of the lack of sales transactions of railroad holdings. Because sales are infrequent, the assessor cannot use the willing seller and willing buyer guide generally available in transactions involving private dwellings or other commercial properties.

Exemptions are also troublesome to the tax administrator. There are local exemptions from taxes up to the limitation of \$500 to volunteer firemen and to veterans. If we went strictly by the decision handed down in *Tippet v McGrath*, 70 N.J. Law 110, the granting of exemptions to volunteer firemen would be unconstitutional. And the same reasoning, because of constitutional prohibitions, would invalidate the veterans' exemptions contained in our laws. Exemptions are discriminatory because they give special privileges to certain groups. There is going to be pressure put on this Committee to see that our Constitution cures these conditions. The Committee ought to call upon Mr. Aaron Neeld of the Division of Taxation, because he prepared the taxation monograph for the Governor's Committee on Preparatory Research and could be depended upon for sound suggestions. Mr. Neeld is familiar with the constitutions of other states because of his research work in this line. Mr. Walsh also suggested listening to Mr. Donald Waesche, because he has had to deal with the little snags and problems in carrying out his duties as a member of the Division of Tax Appeals, in determining the interpretation of the Constitution in the matter of the assessment of property owned by railroads. Finally, Mr. Walsh pledged his cooperation to the Committee.

MR. RAFFERTY: I think what this Committee has to do is to

find out what is wrong or improvident with the existing Constitution and to remedy such conditions. I think if we state our method of approach we will save a great deal of time. If we had an intelligent method laid down whereby we may have these questions broken down into sections and then approach them in that manner rather than from some general over-all statement, we would do better.

MR. WALSH: I think most persons will be cautious about making any definite statements.

MR. RAFFERTY: We ought not to be cautious.. We are here to reframe and revise our Constitution. I think we ought to be candid and thereby save the time of the Convention.

MR. WALSH: Would it be better if we had a general meeting of all the bureau heads and determine what, if anything, is troublesome?

In lieu of something better, which I haven't seen, I believe it would be the consensus to leave the true value clause as it is rather than change it and make it worse. However, the true value clause is troublesome.

There are seven tax bureaus administering state taxes. I will be glad to have each state supervisor submit a report for his bureau to me with a memorandum of what his recommendations or complaints are. Then we can have them analyzed and screened and bring a report back to this Committee for your consideration.

The state fiscal structure has been created by legislation. Constitutional officers are provided for. The budget has been modernized in the past several years. New Jersey is a pretty sound State from the point of view of its financial control, when compared to other states. Dedicated funds having a special purpose can be worked out on a bookkeeping aspect rather than by constitutional restriction. The state budget is \$150,000,000 for the next year. Therefore, I agree with Commissioner Zink that the constitutional provisions should be elastic to meet the changing times.

Because of the reorganization of the fiscal offices in the Department of Taxation and Finance, the Comptroller of the Treasury has no duties assigned to him other than to sit on the Sinking Fund Commission. The Commissioner of the Department of Taxation and Finance is appointed by the Governor subject to confirmation by the Senate, and the directors of the respective divisions are chosen in the same manner.

I feel subordinate positions should be filled with career men and the Commissioner of the Department of Taxation and Finance should be an appointive officer of the Governor. I think that would work out better because then you would have a strong group of tenure people in the Department. I believe the best interests of the State could be served if the directors of the divisions were career peo-

ple with tenure of office. I think it might be well to have the Comptroller's position removed from the Constitution.

The constitutional tax clause should be short. It should not impose restrictions that would restrain the Legislature at some future time from adopting new tax measures, if the State needs such taxes to meet changing times. The tax clause should be flexible in such respects.

MR. LIGHTNER: What is your opinion on that part of Mr. Neeld's monograph which stated that from some sources it was believed that the present tax clause prohibits the State from levying an income tax?

MR. WALSH: If there is any such doubt I think the subject should be studied carefully, because the present fiscal picture of the State Government is such that the Legislature should be free to impose such tax levies as may be needed to operate the State Government and defray the service costs. If the present services are continued, the State may face a 50 million dollar a year revenue shortage in the near future.

There is another fiscal matter that seems worthy of consideration by this Committee. The suggestion won't win a popularity contest, but I believe that the light of realism should be turned on it. I refer to the State School Fund. The principal in this fund, amounting to some \$13,000,000, is frozen by the present Constitution—only the annual interest of some \$400,000 may be used to assist the State to finance educational costs. Maybe this fund should be defrosted and the state budget for one year at least could obtain relief against the heavy educational appropriations to the extent of the amount in the Fund.

SUMMARY OF TESTIMONY OF WILLIAM D. KELLY, STATE SUPERVISOR OF THE INHERITANCE TAX BUREAU:

I have nothing to add to what has been said by Commissioner Zink and Director Walsh. The Constitution in its present form has not in any manner affected the assessment and collection of transfer inheritance and estate taxes. The monograph prepared by my associate, Mr. Aaron K. Neeld, includes a reference to the investigations made by various committees, legislative and otherwise, the recommendations made, and so forth. It also includes references to tax provisions of other state constitutions. It is my thought that the members of this Committee will be assisted by a careful study of the monograph. Personally, I have no recommendations to submit.

SUMMARY OF TESTIMONY OF AARON K. NEELD, DEPUTY STATE SUPERVISOR, INHERITANCE TAX BUREAU, DIVISION OF TAXATION:

Please understand that the monograph on the tax clause as prepared by me is of an abstract character. This is in accordance with the uniform rule of the Governor's Committee on Preparatory Research for the Convention. It does, however, by reference to numerous tax phrases, more or less uniform in nature, from other state constitutions, infer that perhaps New Jersey's Constitution might well be fortified by more specific provisions on classification and exemptions, especially if it be determined

that a specific exemption for veterans is to be included as a part of the tax clause to overcome the inference of *Tippet v McGrath*, 70 N.J. Law 110, affirmed 71 N.J. Law 388, that exemption based on personal qualifications is unconstitutional.

May I call the Committee's attention to the fact that New Jersey operated without any constitutional provision on taxation from 1776 to 1875. While there was considerable debate before the 1844 Convention on this subject, a tax clause could not be agreed upon and was not included.

The present tax clause, 18 words in length, was added to the Constitution in 1875. Notwithstanding its requirement for assessment by uniform rules, according to true value, our courts have always recognized the power of the Legislature to classify property for purposes of taxation and exemption from taxation. And there is a large body of the statutory law of this State which is based on classification for tax and exemption purposes. Detailed references to the decisions and laws on this phase of the subject are set forth in the monograph, which, incidentally, must dispel the common assertion that the tax clause is to blame for the unjust burden of taxation which real property presently bears in this State.

Most state constitutions have specific clauses empowering the legislature to classify property and provide different methods and rates of tax for different subjects of taxation. Also common to many of the constitutions are self-executing exemption clauses, sometimes used in conjunction with permissive clauses, under which the legislature may grant exemptions beyond those enumerated in the organic law.

I would like to emphasize the fact that if a veterans' exemption provision is to be inserted as a part of the tax clause, it is of utmost importance that there be a further provision, either self-executing or permissive, for the exemption of property in public, charitable, religious and benevolent uses.

Stated loosely, there are three schools of thought on the subject of constitutional tax provisions. One believes that the State functions best without any constitutional limitation on the inherent power of the Legislature to deal with taxation. Another, that concise and wide-open provisions for taxation and exemption are best. And still another, that the Constitution should specify in detail the subjects of taxation, the right to exemption, and the methods of assessment, equalization, collection and apportionment of taxes. As the monograph points out, there are still a few state constitutions without tax provisions. These exemplify the thoughts of the group which believes that nothing is best. The framers of the "Model State Constitution" are of that school which believes that the least said about taxation the better. They suggest these 12 words as being wholly adequate: "The power of taxation shall never be surrendered, suspended or contracted away." It might be observed, however, that while this clause has been adopted by many states, including New York, it has not been accepted, without more, by any State. Many tax clauses in other state constitutions have apparently been written by that group which places confidence in detailed provisions. This approach is definitely bad and nearly always results in a breach of that fundamental rule that a constitution should be limited to a declaration of principles and should not attempt to incorporate provisions normally found in statutes.

SUMMARY OF TESTIMONY OF ABRAM M. VERMEULEN, SUPERVISOR, ACCOUNTING BUREAU, DEPARTMENT OF TAXATION AND FINANCE:

Article IV, Section VI, paragraph 2 in the present Constitution was quoted: "No money shall be drawn from the treasury but for appropriations made by law." This provision should be continued, but it does not go far enough. There should be a single, all-inclusive budget covering expenditures for all departments. Legislation presently provides for this. This legislation should be protected in the Constitution so that we could never revert to a system such as prevailed before 1944. The State Highway Department formerly operated under a different fiscal year and under a separate budget from the rest of the State.

The provision regarding the \$100,000 debt limit should be dropped.

**SUMMARY OF TESTIMONY OF ALVIN A. BURGER, DIRECTOR OF THE
DEPARTMENT OF RESEARCH, NEW JERSEY STATE CHAMBER OF
COMMERCE:**

The State Chamber of Commerce supports the provisions of the Hendrickson Report of 1942 relating to taxation and finance. We would like the following provisions of the present Constitution to remain intact: Article IV, Section VI, paragraphs 3 and 4. We also support the paragraph concerning the \$100,000 debt limit.

Article IV, Section VII, paragraph 6 is supported. Generally speaking, we support the Hendrickson Report provision which retains the present financial clause as is. We oppose the dedicating of funds received by the State Government for any special purpose.

The State Chamber of Commerce does not want any constitutional revision which would hamstring the Legislature in the enactment of proper tax legislation. We are opposed to exemptions to veterans. The Constitution should not encourage the evil of exemptions.

We think the new Constitution should contain features providing for a single budget and a single uniform fiscal year for the State Government. I would like to be given the privilege of submitting copies of our Chamber's survey report on the single budget for your study.

MR. RAFFERTY: I move that the suggestion be accepted and that copies of this study be sent to each member of the Committee.

**SUMMARY OF TESTIMONY OF A. R. EVERSON, SECRETARY OF THE
NEW JERSEY TAXPAYERS' ASSOCIATION:**

I came here with certain thoughts, but after hearing the discussion today I might change those thoughts. I would like to support what Mr. Burger said and would like to make it clear that we would be well satisfied with a Constitution that did not dedicate funds. We are opposed to tax limitations by the Constitution. We are interested in tax exemptions and would like to have the privilege of appearing before the Committee again when its study on this subject has been completed. I think this study would be of helpful guidance to the Committee. I will send a copy to each member of this Committee. We favor a single budget. We have something to say on the true value clause but we prefer not to say anything now. I have listened carefully to the men who preceded me and I would like about 20 minutes later on to present our views.

**SUMMARY OF TESTIMONY OF JOHN F. O'BRIEN, OF SOUTH ORANGE,
NEW JERSEY:**

The following communication was presented on behalf of The New Jersey Committee for Constitutional Revision which 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 Voters, Congress of Industrial Organizations, and New Jersey League of Women Shoppers:

"June 24, 1947.

COMMITTEE ON TAXATION AND FINANCE,
NEW JERSEY CONSTITUTIONAL CONVENTION,
NEW BRUNSWICK, NEW JERSEY.

Gentlemen:

On behalf of the New Jersey Committee for Constitutional Revision, the following recommendation is made with reference to paragraph 12, Section VII, Article IV of the present Constitution, which reads as follows:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.'

We recommended that in the new Constitution the provision for the assessment of property at true value be eliminated and that the provision having to do with the assessment of property for taxation read, as follows:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to classifications and standards of value to be established by law.'

In creating such classifications, and establishing the standards of value for each, the Legislature will give due consideration to the type of property, its earning capacity, the public services it receives and its relationship to the welfare and stability of the State and its subdivisions.

Assessments where made on an *ad valorem* basis shall not exceed the true value of the property assessed.

Exemptions from taxation may be granted only by the affirmative vote of two-thirds of the membership of each house of the Legislature.'

Justification for the above recommendation may be briefly stated, as follows:

The provision in the old Constitution was written to meet the needs of a farming community and is totally unsuited to meet the needs of a great industrial State.

In its administration of the tax laws, the Legislature has recognized the fact that the *ad valorem* system of taxation, that is, a tax on the capital value of property at unlimited rates, is a bad yardstick for measuring tax paying ability; it has removed from its application practically all types of personal property, and in the railroad tax legislation there may be noted a move to exclude certain classes of real property from its full application.

In actual practice the administration of our tax system today is directly opposed to the old constitutional provision for the uniform assessment of all property at true value. By numerous amendments to the Tax Act the Legislature has brought about a classification of property for purposes of taxation, and this fact should be recognized and given formalized status in the new Constitution.

The practical application of the true value clause has narrowed almost exclusively to real property, including the homes of our people. The method of assessing that property at ever-increasing high local rates, upon which there is no limit whatsoever, has had a very serious effect on home ownership and the private ownership of real estate generally.

The suggested change will permit the Legislature to provide for the future a tax administration best suited to present day needs, based on equity and the ability to pay, unhampered by a constitutional provision which time, practice and experience, have proven to be obsolete, inequitable, and unenforceable."

This brief statement is made today for the purpose of placing our suggested change in the taxation clause before your Committee. With your permission I should like to present to the Committee a more detailed brief in support of the suggested change, together with the history of the change in the tax clause in the revised draft presented at the election of 1944.

In the meantime, may I respectfully refer you to a brief I presented to the joint legislative committee appointed to conduct hearings on the first revision of the Constitution proposed by the so-called Hendrickson Commission in 1942. This brief appears on page 424 of the second volume of the printed record of the hearing and details at some length the reasons behind the recommendation for a change in the tax clause in the new Constitution.

(The session adjourned at 1:15 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 1, 1947

(Morning session)

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

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The meeting will come to order. Does any member of the Committee have anything special at this time?

MR. JOHN J. RAFFERTY: Mr. Chairman, members of the Committee:

I would like to advise you that the reason you have not received a copy of the minutes of the last meeting was because we encountered mechanical difficulties. However, they will be distributed shortly. All the other things have been attended to as directed by the Committee. I might add that I have discussed the matter with the persons in charge at this end, and they have agreed to make available to the Committee a mechanical recording device, so that it will be helpful not only to the Committee but especially to our stenographer.

CHAIRMAN: In starting this morning I will ask Judge Rafferty to present the first speaker.

MR. RAFFERTY: The City of New Brunswick has been concerned for a long period of time with the matter of the large percentage of tax exempt property in the City of New Brunswick, as compared with the rest of the State. I would like to present Mr. Paul Ewing, who is City Solicitor and who will present the points of view of the City of New Brunswick to this Committee.

MR. PAUL EWING: Mr. Chairman and members of the Committee:

I am here on behalf of the City of New Brunswick to address the Committee briefly on the question of tax exemptions in the State.

Today the subject of tax exemption is one which is of vital interest to those who have the responsibility of carrying on the operation and services of a municipality.

In recent years, because of the widening of the scope of governmental operations and the increase in the enterprises in which governments are participating, the matter of a municipality securing from the government, or from its agencies, some compensation for the services rendered by it, has become a most serious one. In most cases the problem has ceased to be an academic one, and has become a matter of life and death. The situation in New Brunswick is one which may easily be defined as "acute." With an area of five square miles, and a population of 40,000, New Brunswick is faced with the task of operating its city government and furnishing all municipal services, although one-third of its total ratables are exempt from taxation, 18 per cent of said exempt property being owned by Rutgers University, the State University of New Jersey.

All communities in the State are today faced with a growing list of tax exempt property. In many communities we have properties which are producing commercial incomes and which should be bearing their fair share of the municipal tax burden, but which for various reasons are exempt from all taxes. The chief fault in this field lies with the State Legislature, rather than with local governments, since all tax exemptions are granted by the State.

All local revenues are derived chiefly from taxation of real estate. Since one-third (in value) of the real estate in New Brunswick is not paying any taxes for local governmental services, a heavy burden is placed on the remaining two-thirds, and this burden is constantly increasing, because the tax exemptions in New Brunswick and other municipalities in the State are constantly increasing, year in and year out. For instance, in New Brunswick in 1920 the gross valuation of the ratables was 30½ million dollars, with 5 million dollars in the exempt class. To-day the city has one-third of its total ratables exempt, out of a gross valuation of 61 million dollars. This burden is continually being increased, principally by the steady acquisition of property by Rutgers University, and unless these tax exempt properties are compelled to defray their fair share of the governmental cost, the City of New Brunswick is fast approaching the day when it will be unable to render any necessary and essential governmental services, except at an exorbitant and confiscatory price.

In order to appreciate the continual increase of tax-exempt property in the city, and the growing acquisition of real estate by Rutgers University, an examination of the schedule annexed hereto will show that in 1930 the total exempt property was about 5½ million, of which Rutgers University held 1½ million, or 6 per cent of the ratables. The tax exempt property gradually increased to 20 million

in 1945, of which Rutgers has $7\frac{1}{2}$ million, or $18\frac{1}{2}$ per cent of the ratables—an increase in tax exempt property of Rutgers University of over 500 per cent during the past 25 years. During this time the city government was required to furnish police and fire protection, and in most instances substantially increase the personnel and equipment in these agencies; furnish sanitation and sewer services to all these tax exempt properties; streets were improved, repaired and maintained; in short, all governmental services furnished the taxpaying properties were also furnished to the tax exempt properties of Rutgers University.

A further examination of the schedule hereto annexed will show that if all Rutgers' properties were taxed at the present tax rate of \$5.89 per \$100 of valuation, the City of New Brunswick would collect therefrom \$440,238; and if merely the city tax rate of \$2.26 were used (which would probably be a fair and equitable way to arrive at the compensation due the city for such governmental services), the city would receive \$168,920 per annum.

It is the considered opinion of the Board of Commissioners of New Brunswick that since Rutgers is now the State University, it is only fair and equitable that the cost of furnishing these governmental services to its exempt property should be borne by the taxpayers of the entire State of New Jersey, since the *quid pro quo* theory of tax exemptions runs to the benefit of all the citizens of New Jersey, rather than to the taxpayers of New Brunswick alone.

It is our contention that the question of tax exemption is a fundamental one, and should be dealt with in the draft of the revised Constitution. Under the present Constitution, the State Government, or any of its public agencies, cannot take private property without just compensation; and for the State of New Jersey to take a substantial part of the ratables of a municipality is akin to taking property without just compensation. On this basis we urge that the entire question of tax exemption be considered by this Committee to the end that either some limitation on tax exemption be written into the Constitution, or there be a constitutional provision (similar to an amendment now being sponsored by some of the large cities in Michigan) requiring the State to reimburse the city for all revenues lost from tax exempt properties. This constitutional amendment reads as follows, and is recommended for serious consideration by this Committee:

"Amendment to Article X of the Constitution of the State of Michigan, by adding a new Section thereto to be known as Section 22, and to read as follows:

'Whenever by existing Constitution or by statute heretofore or hereafter enacted, property within and otherwise subject to assessment for taxes, in any municipality, is or shall be exempted from city taxes, whether appropriated by the State or given to any other agencies; and whenever the Legislature by statute heretofore or hereafter enacted has or shall im-

pose upon any municipality obligations or duties which shall call for the expenditure of money, either directly or indirectly, the Legislature shall provide, and in some enactment, in case of future legislation, for the reimbursement to such city from state funds, an amount equal to the sum of which the city has been or will be deprived, or which it is or will be obligated to expend.

Such refunds or payments shall be made within six months of the end of the calendar year, and in default thereof, no State tax, sales or otherwise, may be collected, provided, that reimbursement for exemption in force or obligations imposed by existing laws shall be effective one year from the effective date of this amendment. Provided, further, that no return shall be required for exemptions now in force by existing law applying to property of any religious, educational or charitable institution."

Unless the City of New Brunswick and other municipalities in New Jersey similarly situated as to tax exempt property, are granted some relief, ultimately local governments will be unable to furnish the necessary governmental operations required of a modern city, or the taxpaying properties will be burdened with a tax that will in fact be confiscatory.

The City of New Brunswick respectfully requests that this Committee give serious consideration to the question of constitutional limitation, limiting the same to some reasonable percentage of ratables, or that the State and its agencies be required by constitutional mandate to reimburse a municipality for any revenue lost through tax exempt properties.

CITY OF NEW BRUNSWICK TAX EXEMPT PROPERTY

YEAR	VALUATION (GROSS)	EXEMPT PROPERTY	%	RATABLES NET VALUATION	EXEMPT PROPERTY RUTGERS UNIVERSITY ¹	% OF RAT- ABLES
1947	\$64,001,475	\$20,316,358	32%	\$43,685,117	\$7,475,825	17%
1945	61,347,040	19,934,558	32%	41,412,482	7,474,325	18%
1930	64,647,850	20,477,050	31%	44,170,800		
1925	47,478,375	12,939,950	27%	34,538,425		
1920 ¹	30,711,545	5,443,535	18%	25,268,010	1,447,475	6%

BREAKDOWN OF RUTGERS' EXEMPT PROPERTY FOR 1945:

Rutgers College ²	\$3,243,550
New Jersey College for Women	2,399,175
College Farm	1,416,600
Seminary	415,000
Total	\$7,474,325

On a basis of 1945 tax rate of \$5.17 per \$100, taxes would amount to \$386,422

¹ Rutgers property includes College Farm, Seminary, Rutgers Prep., Rutgers College, and New Jersey College for Women, except for year 1920, when property used by New Jersey College for Women was not assessed to College (New Jersey College for Women opened about 1918).

² Includes Rutgers Prep. School.

On a basis of only

City tax rate of\$1.955

City school rate of 1.60

\$3.555, taxes would amount to \$265,712

On a basis of only

City tax rate of\$1.955, taxes would amount to \$146,123

On a basis of 1947 tax rate of \$5.89 per \$100, taxes would

amount to\$440,238

On a basis of only

City tax rate of\$2.26

City school tax rate of 2.10

\$4.36, taxes would amount to \$325,880

On a basis of only

City tax rate of\$2.26, taxes would amount to \$169,920

MR. ALLAN R. CULLIMORE: Do you consider this a constitutional rather than a statutory problem?

MR. EWING: Yes sir.

MR. CULLIMORE: Why?

MR. EWING: Because the Legislature has been prone in recent years to grant exemptions to certain classes and categories of real property.

MR. CULLIMORE: You don't think that is a matter for the Legislature?

MR. EWING: I think it is a constitutional matter.

MR. CULLIMORE: Have you a specific proposal?

MR. EWING: I have a proposal somewhat like Michigan, to be inserted in their constitution.

MR. JOHN MILTON: Are you referring to the reimbursement program?

MR. EWING: Yes sir.

MR. SIGURD A. EMERSON: Is that the same thing as the county categories? Would you reimburse the counties?

MR. EWING: Yes, but that is a different set-up than the tax exempt property in New Brunswick. You are referring to parts used by the county. We in New Brunswick have a highly unique situation in that one-third the property is exempt, and the burden of it is the State University's. We feel that since Rutgers is the State University, that the State should reimburse the City of New Brunswick.

MR. EMERSON: If the county parks took a large tract of land,

would you say the taxpayers in that county should make up for the loss?

MR. EWING: Yes sir.

MR. EMERSON: How about Monmouth County, where the government owns a large tract of land? Who would make that up?

MR. EWING: The Federal Government.

MR. WILLIAM J. DWYER: Will you direct your thought to this tax exempt property of the University? It seems to me to be a matter of economic adjustment, in that the loss to the city might be made up if the State paid for police, firemen, etc. Would that be helpful to the City of New Brunswick?

MR. EWING: Yes sir. However, what would you do about our sewage treatment plant? Of course, we could install water meters, but we are treating the sewage at Rutgers.

MR. DWYER: I think there must be some measuring device that could take care of that problem.

MR. EMERSON: Does the University pay for the improvements in the construction of sewers, sidewalks, etc?

MR. EWING: Not in my time.

MR. EMERSON: Aren't they usually assessed?

MR. EWING: New Brunswick is assessed.

MR. MILTON: I haven't read the suggested reimbursement program which is now apparently being effectuated in Michigan. Am I correct in assuming that the limit of the provision would be to require a governmental agency to reimburse the city where the governmental agency had caused the exemptions because of appropriations to its own use?

MR. EWING: That is my understanding.

MR. CLYDE W. STRUBLE: Does the City of New Brunswick own its own water plant?

MR. EWING: Yes sir.

MR. STRUBLE: Do you bill separately for the water?

MR. EWING: Yes sir, and the sewage is taken care of in the budget.

MR. STRUBLE: Then it could be billed properly.

MR. EWING: Yes sir.

MR. MILTON: Isn't this a rather live issue in Essex County between the Park Commission and West Orange? The Park Commission wants to take over a golf course, but West Orange has gone so far as to threaten to rezone the area.

MR. EWING: Yes, sir; that's right.

MR. FRANK J. MURRAY: This is a rather old issue in my own town of Orange, which is a mile long and two and a half miles wide. It is an old city and the adjoining municipalities grew from it and grew bigger, but we have all the hospitals, all the factories,

most of the Y.M.C.A.'s, and all of the charitable organizations and most of the churches. As a result, the town of Orange probably has a record of the largest amount of tax exempt property of any city its size. This matter has been agitated continuously for the last 25 years or more, and attempts have been made to try and get the adjoining municipalities who are getting some benefit to participate in making up the loss which the city bears. There is apparently no law to meet this situation.

I was just wondering whether there is an average rate of exemption, or percentage of ratables that every municipality should be expected to suffer in situations of this kind, and beyond which it should be a matter of state interest. I realize changing all kinds of things in the Constitution is a great mistake. But I do think this is a serious problem for quite a few municipalities and it is a great injustice to them. I think it is worth some serious thought by this Committee.

MR. MILTON: Would the Legislature condescend to enact a law which would appropriate to New Brunswick a sum of money which would meet the deficit caused by the exemption of State University property?

MR. EWING: I don't know, but Senator Toolan has at the request of the City of New Brunswick introduced such a bill each year for the past eight years, but it never got out of committee.

MR. MILTON C. LIGHTNER: You are trying to get it into the Constitution, rather than by legislation?

MR. EWING: My suggestion, sir, is to limit tax exemptions to some reasonable percentage of ratables, and to provide reimbursement by the state agency.

MR. LIGHTNER: In referring to reimbursement proposals, that would not have affected the granting of tax exemptions to fraternities?

MR. EWING: No.

MR. LIGHTNER: That is what I had in mind when I inquired whether it is sound to deal with something of this kind in the fundamental constitutional law, or whether it shouldn't be a matter or function for legislation.

MR. EWING: When you are dealing with a governmental agency rendering service to all the people of the State, and the property is in another community, I think it rates fundamental constitutional law.

MR. LIGHTNER: I still question whether it is a matter for fundamental law rather than for legislation to be enacted in the light of changing conditions. However, I am not opposing your plea for help for the City of New Brunswick. I see nothing in your argument

so far which pairs it with the fundamental law of the State. I desire that you prove your case more clearly.

MR. EWING: Because it is a fundamental question.

MR. LIGHTNER: So are many questions brought before the Legislature.

MR. MILTON: I think what you mean is that if the Legislature created it, then they should cure it. I assume that you are going on the theory that if the Legislature wants to exempt certain property in New Brunswick they should pay their fair share?

MR. EWING: That's right.

MR. MURRAY: Do you think there is any power in the Legislature to grant reimbursement? Do we need a constitutional provision which would permit the Legislature to grant them the authority to do this?

MR. EWING: I think we do.

MR. MILTON: I wonder if we should not write for an opinion of the Attorney-General? Perhaps in answer to the question I asked Mr. Ewing, and which I frankly confess I can't answer myself off-hand, if the Legislature can now constitutionally appropriate to the City of New Brunswick a sum of money which would represent a deficit caused by a devotion of land within the territorial limitations of that city to house the State University, then so far as we are concerned it would seem the matter for action would be dissipated. I would be inclined to think the Legislature cannot do so under our present Constitution. In fact, as I talk, I would be pretty well of the opinion that it could not.

CHAIRMAN: I don't think it could either.

MR. MILTON: I wonder if we could ask the Attorney-General about it with the hope of getting an answer? Of course, we must phrase our letter in such a manner that the Attorney-General can answer it.

CHAIRMAN: Why don't you put that in the form of a motion?

MR. MILTON: I do, sir.

MR. EMERSON: I second the motion.

MR. MURRAY: I would make it broader than limiting it to New Brunswick—to cover this whole question as to all municipalities—of the authority of the Legislature under the present Constitution to grant relief in some form, by reimbursement or otherwise, to municipalities who have an exceptional burden, or heavier average burden than other municipalities. Whether it is New Brunswick or some other municipality, they both suffer in the same way and are handicapped to the same extent.

CHAIRMAN: At any time, for instance, if the Legislature should grant to hospitals or a corporation an exemption from tax upon the land and improvements erected thereon, the State should

reimburse the municipality in the amount of money which the municipality would lose in taxes assessed on that land.

MR. MURRAY: I mean, if the average exemption in municipalities in this State started at say ten per cent, and then we find a municipality that has 30 per cent or more, there should be some method worked out to reimburse those municipalities for a part of that excess; otherwise, they are unable to provide public services. There should be an average in exemptions granted by state laws.

MR. EMERSON: On the other hand, there are many municipalities who benefit by the tax exemption—Catholic schools for example; in that way the communities save money on each student.

MR. MURRAY: The law should be written to reimburse a municipality, and the law should be so written that it benefits the city.

CHAIRMAN: As I understand the proposition, Mr. Ewing, you want a constitutional amendment which will permit the State to reimburse municipalities for certain exempt property on some percentage basis.

MR. EWING: My proposition is two-fold. One is the limitation of tax exemption to some reasonable percentage of ratables. The second is a constitutional provision permitting the State to reimburse municipalities for the money lost by tax exempt property of one of its agencies.

CHAIRMAN: What about Trenton, where you have a considerable amount of tax exempt property represented by state property?

MR. EWING: The same condition exists there.

MR. LIGHTNER: Do you want the provision to read "permit" or "require" reimbursement?

MR. MURRAY: I assume doubts as to the authority under the present Constitution would cover his points.

CHAIRMAN: That's right.

MR. DWYER: I think that if it is possible, we should leave this matter up to the Legislature.

CHAIRMAN: We have a motion by Senator Milton.

MR. EMERSON: Will you frame your question?

MR. MILTON: I would rather do it more deliberately so that I can give the Attorney-General something definite.

CHAIRMAN: Is there any debate on that motion?

(Silence)

CHAIRMAN: All in favor, please signify by saying "Aye"; opposed saying "No."

(Chorus of "Ayes")

CHAIRMAN: Very well, then. We will communicate with the Attorney-General on this question.

MR. RAFFERTY: If there are no further questions to ask of Mr. Ewing, I would like to state that on the morning of July 10, in the Gymnasium here where the Convention meets, this Committee will hold a public hearing. At that time any person wishing to present any matters regarding taxation and finance is invited to appear before us. The meeting is scheduled for July 10, 1947.

Mr. Chairman, may I ask if there is a representative of the League of Women Voters here this morning? They have requested time to appear before us, but perhaps they did not get my reply to their letter.

(Silence)

MR. RAFFERTY: At this time I would like to call Mr. W. H. Connell, director of the Motor Carriers' Service Bureau.

MR. W. H. CONNELL: I represent the Motor Carriers' Service Bureau. I founded the Motor Carriers' Service Bureau about ten years ago for the purpose of trying to remove a discrimination in tolls that exists on the Staten Island bridges of the Port Authority as compared with the Hudson River crossings.

Shortly before the outbreak of World War II, I conferred with ex-Governor Smith of New York with respect to the matter, and he suggested that I discontinue the efforts of the Bureau for the duration. I haven't done anything about the matter since. I was greatly impressed with Governor Driscoll's statement and with President Clothier's statement in opening this Convention, and felt that I might have some information which might be helpful to the Committee in its deliberations. I should like, if possible, to be helpful, and that is my reason for being here today.

I think one of the things this Convention should do is to give us a provision in the Constitution that prohibits the passing of special legislation. I am referring to Article IV, Section VII, paragraph 11.

CHAIRMAN: That just misses us by one. We have paragraphs 6 and 12.

MR. MILTON: I think, Mr. Connell, on that particular Section you should report to the Legislative Committee.

MR. CONNELL: Perhaps that is so.

MR. MILTON: I am sure Senator O'Mara will be glad to hear your report before his Legislative Committee.

MR. CONNELL: Thank you. I should also like to call the attention of this Committee to the provisions in paragraph 12: "Property shall be assessed for taxes under general laws and by uniform rules according to its true value."

This Constitution was written over 100 years ago and the State of New Jersey was eager at that time to get railroads and they were

willing to make sacrifices to get them built. Twenty-five years ago the State of New Jersey was very anxious to get crossings on the Hudson River and made certain concessions to the Port Authority in the way of taxation in order to make it possible to finance those things. I was greatly impressed with the plea of the gentleman who just preceded me with regard to the way we have drifted into tax exemption, and there is a great need for our doing something about it. I don't believe it is possible to lay down a hard and fast rule that will apply to every set of circumstances. I have particularly in mind the situation with respect to the railroads. I read the other day where the Central Railroad of New Jersey was going through a reorganization proceeding and that the State of New Jersey was going to interfere in the matter and, further, that the Central owed the State some ten million dollars in back taxes. I also remembered the decision of the court in the railroad case and I gathered from that that the Railroad Tax Law is unconstitutional.

I was also impressed with the statement of the Port Authority that appeared in the papers a week ago last Friday. That statement showed that the Port Authority had earned $8\frac{1}{2}$ million dollars profit and had the biggest year in its history. In that kind of case, it would seem to me that hospitals, churches and charitable organizations without any great source of income should be given some help in the form of tax exemptions. On the other hand, where the organization has a source of income and is particularly able, and that source is very large, it seems to me that it could very well make a fair contribution to help our government. In this statement of the Port Authority to which I have just referred I noticed an item that said rental in the inland terminals would amount to $1\frac{1}{2}$ million dollars in 1946.

Several years ago the New York Dock Company brought a suit to enjoin the City of New York from accepting from the Port Authority some \$60,000 in taxes which represented the amount which the city had been netting on the property that the Port Authority used for Inland Terminal No. 1. The court held that the money offered could be accepted by the City of New York without violating the law.

It seems to me in those cases that the law shows discrimination. The rental of the Port Authority terminals netted $1\frac{1}{2}$ million dollars, and the \$60,000 that the Port Authority paid the City of New York amounts to about four per cent of the earnings.

I was interested in reading a press report made of the Committee and Mr. Milton's statement that the remedy was to enforce the law. It is a difficult thing to enforce the law under a different set of circumstances. If you had followed up on the Port Authority it would sound something like 16 million dollars. It follows that on

a four per cent tax lien on that you could have a tax of \$640,000. This would be far in excess of the tax assessed against the New York Dock Company and its buildings. I think this cause of tax exemption and the aid to municipalities is sufficiently important to warrant serious consideration by this Committee.

CHAIRMAN: Thank you, Mr. Connell, for giving your views to this Committee.

I now recognize Mr. Harry W. Wolkstein, of Newark, who appears as a representative of the New Jersey Taxpayers Association and the Building Contractors' Association of New Jersey.

MR. HARRY W. WOLKSTEIN: I can best present the views of the two associations I represent by reading the following prepared statement (*reading*):

"HARRY W. WOLKSTEIN & CO.
Certified Public Accountants
(New York and New Jersey)
744 Broad Street
Newark 2, New Jersey

June 28, 1947

Committee on Taxation and Finance
Constitutional Convention of the State of New Jersey
New Brunswick, New Jersey

Gentlemen:

The Constitution of the State of New Jersey has not kept pace with the changes in social and economic conditions, nor has it kept pace with the ever-increasing problems of public finance. The financial structure of our State Government is in many respects as archaic and scrambled as the Constitution itself, having grown up over a number of years, with the assistance of statute added to statute, so that part of our present fiscal structure is constitutional and part statutory. The need for constitutional revision of our fiscal structure is apparent, for constitutional reform should precede administrative reorganization.

FINANCIAL FUNCTIONS: The financial functions of our State Government have been administered by a number of officials and boards, including the Governor, the State Comptroller, the State Treasurer, the Attorney-General, the State House Commission, the State Purchasing Agent, the Civil Service Commission, the State Budget Commissioner, the State Tax Commissioner, the State Commissioner of Finance, and the Department of Local Government. There has been a diffusion of responsibility in the administration of state finance. Under our present Constitution we realize that the Governor has very little control over the actual administration of state finance.

APPROPRIATIONS: Our present Constitution regulates public expenditures with the brief provision that 'No money shall be drawn from the treasury but for appropriations made by law.' The Constitution as proposed by the Revision Commission in 1942 is certainly an improvement inasmuch as it provides in Article VII, Section V that all appropriations for the support of the State Government shall be made in a single budget appropriation bill. The new provisions in Article VII, Section V will serve to compel better budgetary planning, and to reduce continuing appropriations, and will enable fiscal officers to prepare simple, accurate financial statements exhibiting the cost of operations of the State for any given fiscal period. Furthermore, in providing that no supplementary appropriations may be made unless restricted to a single purpose and approved by a two-thirds vote of each house of the Legislature when funds are

available, the proposed Constitution will serve to eliminate extravagances and inefficiencies.

DEDICATED FUNDS: Under our present system, it is exceedingly difficult for our fiscal officers to prepare financial statements indicating clearly the operating results of the State Government as a whole, since the complex system of dedicated funds has resulted in numerous independent departments and agencies. The State Audit and Finance Commission, in its report of 1930, offered the following criticism of dedicated funds existing within our state governmental structure: 'The dedication of revenues amounts to a lump sum appropriation with authority in the spending agency to apportion, apply and administer as it sees fit in its uncontrolled judgment, providing only that expenditures do not exceed the amount appropriated and come fairly within the general purposes described.'

This system of levying a tax, fee, or license, and thereafter dedicating the entire yield to a flexible service without adequate and direct budgetary control, encourages wasteful expenditure by individual agencies. The dedicated fund method assumes that the fee or license as levied will produce exactly the proper amount of funds required by the particular agency involved. If the fee or license, as imposed, does not produce a sufficient amount of revenue the result may be inadequate service by the agency. If, on the other hand, the tax as levied should produce double the revenue required for adequate service, the result as witnessed in too many instances of the past, is needless extravagance without proper executive control. The yield of any one tax or license is not necessarily the proper measure of what should be spent by that agency.

May I quote from the 1931 report of the Commission on County and Municipal Taxation and Expenditures: 'The State of New Jersey will never get its finances in order, and it will never be able to set up the kind of budgetary control of these finances which is so essential to wise and prudent management, until the unscientific practice of dedicating specific revenues for specific purposes is entirely abandoned.'

FISCAL OFFICERS: I respectfully recommend that our revised Constitution define clearly the basic duties and responsibilities of our state fiscal officers. The State Treasurer is a constitutional officer appointed by the Senate and General Assembly in joint meeting for a term of three years. His proper duties are to receive and disburse the moneys of the State, maintain records of receipts and disbursements of public money and of state debts. Yet he has been permitted to hold a number of ex-officio administrative positions. In order to preserve his independent status, he should be removed from all administrative boards and agencies, and his duties restricted to the collection, custody and expenditure of state moneys. At present, many cash funds are not controlled by the Treasurer. Where practicable, all state moneys should be collected by the State Treasurer. Where impracticable, the moneys collected should be carefully controlled by special stationery and deposited in a state depository to the credit of the State Treasurer immediately.

At the present time the State Comptroller maintains the central accounting system of the State, controlling the expenditure of state funds, and auditing the accounts and records. Under our century-old Constitution, the Comptroller is elected by the Senate and General Assembly in joint meeting for a term of three years. His administrative duties include examining and settling all amounts due or presented against the State, superintending the collecting of all revenue, paying all moneys directed by law to be paid out of the Treasury, and registering all receipts for money paid to the Treasurer. In addition to his administrative duties, the Comptroller is a member of a number of boards and departments. Under his supervision are the Audit Division and the accounting system. The function of the Audit Division is to make a complete pre-audit of the reports and invoices of all state departments. The duty of the Accounting Division is to prescribe and enforce a uniform system of accounting and reports for all departments of the State.

AUDITING: Our century-old Constitution reflects a general lack of appreciation of the character and advantages of the independent Auditor in controlling fiscal matters. In Article VIII, the present Constitution provides that 'The Secretary of State shall be ex-officio an auditor of the accounts of the treasurer, and as such it shall be his duty to assist the legislature in the annual examination and settlement of said accounts, until otherwise provided by law.' In 1933 the Legislature attempted to correct prevailing defects by creating the office of the State Auditor, his duties to include the post-auditing of the accounts of the State and all state departments, institutions, agencies and political subdivisions. At the same time, the office of State Commissioner of Finance was created to satisfy the need for a financial manager. In recent years, the need for more adequate supervision of municipal affairs became acute, so that in 1938, under the Local Government Acts, a Department of Local Government was established for the purpose of auditing and supervising the financial operations of municipalities.

The addition of statute upon statute through the years has resulted in greater confusion instead of simplification of the state fiscal structure. There is no proper balance between the Legislature and the Chief Executive in managing the State's finances. The function of post-auditing touches upon the financial relationship of the Legislature and the Governor so greatly that in my opinion it should be permanently incorporated within the revised Constitution.

PRE-AUDITING, AND POST-AUDITING: We cannot overemphasize the importance of post-auditing in any sound system of budgetary control, yet the value of this function has been more or less neglected in New Jersey. In the past, there has been no clear line of demarcation between the administrative functions of the Comptroller, and the functions of post-auditing. In preparing the revised Constitution, it is my belief that we should distinguish carefully between pre-auditing and post-auditing. If the Comptroller is to have the administrative duties of an executive then he should be appointed by the Governor and should be responsible to him. The post-audit of state finances should be conducted periodically by an independent State Auditor appointed by and responsible to the Legislature. On the other hand, if the Comptroller is to be appointed by and responsible to the Legislature, then he should be the official post-auditor and accordingly should be removed from all executive duties, including pre-auditing.

In reply to those persons who fear that reorganization of the state fiscal structure would centralize responsibility and power in the Chief Executive and a few other officials, I say that proper emphasis upon the position of the post-auditor would provide the Legislature with the desired means of a check upon the Executive and his subordinates in financial matters.

REVENUE SYSTEM: The present revenue system in New Jersey may be criticized as being inequitable and outmoded. Taken as a whole, the revenue system is not sufficiently flexible. Because of existing exorbitant taxes on real estate, many property owners lost their properties to mortgagees or municipalities prior to World War II. Real property bears a greater share of the tax burden than it does in other comparable states. Many of the municipalities in our State are in serious condition, because of exorbitant realty taxes, and are finding it more difficult to collect these taxes each year.

TAX CLAUSE: Our old Constitution provides in Article IV, that 'Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.' We all know that this constitutional law is being grossly disregarded, since not all property legally taxable is being taxed. Some real property and much personal property are not being listed. Property is being assessed neither at its true value nor at any uniform percentage of true value. We are faced with a serious condition of inequality in the assessment of property throughout the State.

Many tax authorities have been of the opinion that if a modern state

does not adopt legal classification of property for tax purposes, then illegal or extra-legal classification will prevail so long as property is taxed under the uniformity rule. I believe that our State's experience in taxation for the past century supports the above opinion. Until 1945 our tax structure included the taxation of intangibles at the same rates as prevailed for realty and tangible personalty. In 1945 our Legislature passed 'The Corporation Business Tax Act of 1945,' which act provided for the repeal of the former tax on intangibles and substituted a franchise tax levied upon the net worth of each corporation at reasonable low rates, despite the fact that our present Constitution includes the uniformity rule.

It has frequently been argued that our uniformity clause operates to prevent the State from enacting a graduated income tax with exemptions. Although we do not advocate a state income tax, the time may come when our Legislature may consider such a tax.

PROPERTY CLASSIFICATION: It should be noted that a number of states, after unsuccessful attempts over a long period of years to enforce the assessment of taxes uniformly as required by their old constitutions, have developed a logical scheme of property classification. As far back as 1907, the Conference of the National Tax Association passed the following resolution, 'Resolved, that all State Constitutions requiring the same taxation of all property, or otherwise imposing restrictions upon the reasonable classification of property should be amended by the repeal of such restrictive provisions.'

The general property tax that is now in effect under our old Constitution is fundamentally defective in that it assumes that property *per se* possesses ability to pay, while it ignores the factor of property income. In order to correct inequalities in taxation of the past, and to provide for a just and simple system of state and local taxation, I respectfully recommend that you repeal the existing tax clause and that you adopt in the revised Constitution the following tax clause, 'Property shall be valued for taxes under general laws and by uniform rules according to its equitable relation to other properties of like kind.'

BENEFITS OF PROPERTY CLASSIFICATION: Classification of property seeks to solve the problem of adjusting the tax burden to varying capacity to pay taxes as between different classes of property. Instead of applying the uniformity rules to all properties, equality is limited to the same class of properties. Classification comes much closer to 'taxation according to ability to pay' than does our present uniformity rule which requires equality of treatment for unlike properties. The essence of classification is the differentiation in effective rates of taxation between various classes of property. Of course, we must recognize that property classification should be accompanied by adequate and efficient administration.

In providing for the classification of property for purposes of taxation, justice will be accorded those classes of taxpayers whose property has been unduly taxed by excessive tax rates of the past.

INTERGOVERNMENTAL RELATIONS: The need for federal and state cooperation in the field of taxation is an urgent one. As we develop further national policies in the field of taxation, our State will find itself hampered by antiquated provisions on that subject, such as the uniformity clause.

The Federal and State Governments overlap each other constantly in the field of taxation. Too frequently has there been a duplication of taxation and too frequently has there been conflict between State Governments and the Federal Government because we have usually thought in terms of units of government, federal, state or local, rather than in terms of the services or the functions of government.

I respectfully submit that our revised Constitution should include 'permissive clauses' authorizing the Legislature to adopt legislation of such type when it is found desirable by the Legislature. I quote from Article XI on 'Intergovernmental Relations,' sec. 1100 of the 'Model State Constitution' as adopted by the National Municipal League: 'Nothing in this constitution shall be construed in such manner as to impair the consti-

tutionality of any act passed by the legislature for the purpose of making effective the cooperation of the state with the federal government under any legislation which Congress has the power to enact.'

In my opinion, the revised Constitution should include the permissive clause referred to above, thus serving to improve intergovernment relations of the future for the benefit of all our taxpayers.

Section 1101 of this 'Model State Constitution' is also recommended for your consideration, 'The legislature shall provide by law for the establishment of such agencies as may be necessary and desirable to promote cooperation on the part of this state with the other states of the Union. The legislature may appropriate such sums as may be necessary to finance its fair share of the cost of any interstate activities.'

NEW FORMS OF TAXATION: One matter in which the New Jersey State Taxpayers Association is particularly concerned, and which the Executive Committee requests be included in the revised Constitution, is the proposal that 'a two-thirds vote of the Assembly and Senate be required before any new forms of taxation can be adopted by action of the State Legislature.'

Respectfully submitted,

/s/ HARRY W. WOLKSTEIN,
Certified Public Accountant
 (New York and New Jersey)

Appearing as a representative of the New Jersey
 Taxpayers Association and the Building Con-
 tractors' Association of New Jersey"

CHAIRMAN: Thank you, Mr. Wolkstein.

If there are no questions, I now recognize Mr. James J. Smith, Executive Secretary of the New Jersey State League of Municipalities.

MR. JAMES J. SMITH: I would like to read the following statement into the record (*reading*):

"June 30, 1947

To William T. Read, Esq., Chairman,
 and Members of the Committee on Taxation and
 Finance of the Constitutional Convention of New Jersey

The New Jersey State League of Municipalities has given careful consideration to the question as to what, if any, changes should be made in the existing tax clause of the New Jersey Constitution, Article IV, Section VII, paragraph 12. That provision now reads as follows:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.'

In considering this question we have had in mind not only the language of this clause, but the most recent and authoritative court decisions construing it. We find the following objectionable features in the existing tax provision as now construed:

1. It permits of unlimited exemption of any class of property selected by the Legislature. *Schwartz v Essex County Board of Taxation*, 129 N.J.L. 129, affirmed 130 N.J.L. 17 (1943);

2. It permits the segregation by the Legislature of any category of real property and the taxation thereof at any rate selected by the Legislature, no matter how low and without regard to the burden of taxation imposed upon real estate taxpayers not so favored. *Jersey City v State Board of Tax Appeals*, 133 N.J.L. 202 (1945), affirmed 134 N.J.L. 240.

First, with respect to exemptions: The League is of the opinion that a major cause for the heavy and oppressive burden which now falls upon real estate generally is the series of exemption statutes secured by the efforts of special groups over the years. Each of these exemptions has

been enacted without any broad and comprehensive consideration either of the merits of the particular exemption granted or the impact of the entire body of exemption law upon the burden necessarily borne by such real estate as is not exempted. It is regarded as absolutely essential, particularly in times such as the present, that the bars be put down permanently against this continuous flood of tax exemption legislation. On the one hand, the costs and expenses of operation of municipal government are constantly increasing, while on the other, no adequate provision is being made for the transfer of part of the existing burden on real property to other potential sources of tax revenue. In these circumstances it is vitally necessary that the entire approach to exemptions from taxation, as manifested in the past, be reversed and that a permanent and basic policy be fixed in our Constitution on this subject. The League believes that exemptions from taxation should be strictly confined to property of a type which renders some public, moral, or social value, recognized historically as meriting tax exemption. In our view such exemption should be strictly limited by constitutional provision to property exclusively devoted to charitable, educational, religious, or cemetery purposes, not conducted for profit, and subject to legislative restriction as to scope and extent. It should be made impossible for exemptions to be extended to any other type of property.

Secondly, with respect to equality of the tax burden on real property: Real property has for decades been the main support in this State of municipal and county government, and, to a lesser degree, of State Government. Although the League hopes that the trend of state fiscal policy in the future will be toward lightening the tax burden on real estate and requiring that other types of wealth may be compelled to share the burden of government to a substantially greater extent, it realizes that until the Legislature takes such action, real estate will continue to bear the substantial brunt of the cost of municipal and county government. It also is aware, as pointed out hereinabove, that the cost of government is continually increasing. Under such circumstances it is regarded as a matter of basic policy that the real estate tax burden should be equally distributed on all classes of real estate assessed for taxation, and that the Legislature should be forbidden to select any particular class of real property and favor it with a preferential tax rate. Although it happens that today there is only one class of real estate which is so favored, the decision in the *Jersey City* case cited hereinabove is broad enough to permit the extension of such preferential taxation on real estate to other classes of real property. Moreover, the one class of real property which today receives the benefit of a preferential tax rate is property used for railroad purposes, which is an exceedingly important source of revenue to most of the municipalities in the State and also to the State Government directly. There appears to be little reasonable expectation that correction of the existing inequitable situation in this regard will be made without constitutional direction.

The League regards it as essential that this Convention issue its mandate compelling the distribution of the tax burden assessed against real estate equally against all classes and types of real property assessed for taxation.

The League therefore recommends as follows:

1. That the Constitution contain a specific provision restricting exemptions from taxation to property used exclusively for religious, charitable, educational, or cemetery purposes, and not for profit, subject to restriction as to scope and extent by the Legislature;

2. That Article IV, Section VII, paragraph 12, of the present Constitution be revised to read as follows:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. The burden of direct taxation

upon all real property not exempted shall be equal.'

Respectfully submitted,

New Jersey State League of Municipalities,

/s/ JAMES J. SMITH

James J. Smith

Executive Secretary"

CHAIRMAN: Thank you, Mr. Smith.

I recognize Miss Bertha Lawrence, who represents the New Jersey Education Association of which she is president.

MISS BERTHA LAWRENCE: We would like to direct the attention of the Committee to two possible changes (*reading*):

"NEW JERSEY EDUCATION ASSOCIATION PROPOSAL
TO CONSTITUTIONAL CONVENTION OF NEW JERSEY OF 1947

Proposal that paragraph 6 of Article IV, Section VII in the present State Constitution be retained, but that it be made into two paragraphs.

Resolved that the following be agreed upon as part of the proposed new State Constitution:

1. 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 the State between the ages of five and eighteen years.

2. 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 pretense whatever.

STATEMENT

Although this proposal makes no change in the meaning of the paragraph appearing in the present State Constitution, it would clarify, make more logical, and improve the composition of that paragraph. No change should be made in the actual wording of the paragraph in question because: (1) the responsibility of the Legislature for education should be clear; and (2) the State School Fund should have the same guarantees as those provided by the present State Constitution."

We believe it would be clearer to all concerned if it read that way.

MR. EMERSON: You want to reverse the two sentences?

MISS LAWRENCE: Yes, that's right. We would like to keep the identical wording as it is now, but changed as we suggest.

Our second proposal I am not going to dwell on at great length because you have already covered it. However, I do want to read it into the record (*reading*):

"NEW JERSEY EDUCATION ASSOCIATION PROPOSAL
TO CONSTITUTIONAL CONVENTION OF NEW JERSEY OF 1947

Proposal that Article IV, Section VII, paragraph 12 of the present State Constitution be amended.

Resolved that the following be agreed upon a part of the proposed new State Constitution.

1. Property shall be assessed according to classifications and standards of value to be established by law.

STATEMENT

There is some doubt at the present time concerning the right of the Legislature to tax some resources in the State which would pay their fair share of the cost of State Government.

The actual forms of wealth in New Jersey have varied considerably over the generations in their quantity and ability to support State Government financially. The Legislature and the people of the State should be free to tax the wealth in the State in a flexible manner throughout the years. No form of wealth and no group of New Jersey citizens should be permitted constitutional protection from financial support of State Government. On the other hand, no form of property should be over-taxed because of a constitutional provision.

Our entire tax structure is in need of revision in harmony with the demands of the 20th and 21st Centuries. Our Constitution should be so written as to make such a revision clearly possible."

You have heard already today the proof of the unequal method of exemptions that has been made and that has been recognized for some time.

Our interest and purpose in instituting changes, which we have indicated here for you, chiefly is to see that in the instrument which becomes the standard law of the land there is a provision that will be enforced and which in the past has been observed more by lack of enforcement. Our real interest, too, is that we believe that this provision in the Constitution should be a broad provision, establishing a policy, and that the Legislature should be free within its wisdom and under changing circumstances be permitted to make whatever changes seem to be necessary.

We are on the verge of an atomic age. We have no idea of what the future will develop. We are writing an instrument of extreme importance. This is something for statesmen to do. We will have to trust our Legislature if it is to meet the changing conditions. We believe it would be far better for you gentlemen to write something that would not be misunderstood, as it is the basic law, and trust our Legislature to meet the changing conditions with proper tax laws.

MR. SMITH: I would like to present Milton B. Conford who has been Legal Assistant of the State Board of Tax Appeals from 1938 to 1942; compiler of the annotated State Tax Laws in 1938; compiler of *State Tax Opinions* in 1939. He has been in legal practice in Newark since 1933. He has been specializing in litigation and consultation with municipalities on tax matters. He has advised Newark, Jersey City, Hoboken, Union City, West New York, and Weehawken on tax matters. He was Special Assistant Attorney-General in 1941-1944, in charge of railroad tax litigation. He was a member of Governor Edison's five-man committee for study and revision of the intangible personal property tax law in 1942.

MR. MILTON B. CONFORD: Article IV, Section VII, paragraph 12, of the present Constitution reads:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

Our proposed revised tax clause is:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. The burden of direct taxation upon all real property not exempted shall be equal."

I would like to read into the record the details of our plan for a tax clause in the revised Constitution. (*Reading*):

"1. *Statement of the Problem*

In approaching the question as to what, if anything, should be done by way of change or revision in the new Constitution, of Article IV, Section VII, paragraph 12 of the present Constitution, which is the sole direct reference to taxation therein, it becomes necessary to consider whether the tax clause as now construed by the courts, involves any basic conflict with sound taxing policy, and, if it does, how it should be revised to serve that basic policy.

The present tax clause of the Constitution was added to the Constitution by amendment in 1875, along with a number of other constitutional amendments, and it reads:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.'

2. *What does the present tax clause of the Constitution mean today, as judicially construed?*

While we intend to demonstrate, under Point 6 hereinafter, that one of the basic purposes of the people in amending the Constitution in 1875, by the addition of the tax clause, was to secure *equality of burden* in property taxation, we must, in considering the problem of revision today, reckon with the most recent judicial constructions of the provision. The composite picture of Article IV, Section VII, paragraph 12, revealed by an examination of all of the decisions construing the clause to date, is as follows:

(a) The tax clause has no effect whatever on the legislative power to deal with taxes other than property taxes, such as franchise, excise, privilege, or other forms of imposition aside from direct *ad valorem* taxes. This is for the reason that power to tax is inherent in the Legislature, except where limited, and Article IV, Section VII, paragraph 12, is a limitation only with respect to property taxes. *Jersey Central Power & Light Co. v Asbury Park*, 128 N.J.L. 141, 145, 146 (1942), affirmed 129 N.J.L. 253 (1942).

(b) The Legislature may select any class of property, real or personal, and, while required to provide for its tax valuation at true value, may, nevertheless, apply thereto any rate of taxation whatever, entirely without regard to what rate is applied to any other property whether real or personal. *Jersey City v State Board of Tax Appeals*, 133 N.J.L. 202 (1945), affirmed 134 N.J.L. 240 (1946). Thus, the Legislature may provide that real estate used for railroad purposes, or for a water company reservoir, or for any other separately defined class of use, may be set aside as a class, assessed at true value, and taxed at \$1 per hundred, or 50c per hundred, notwithstanding that all other real estate in the same community, also assessed at true value, may be paying a rate of \$4, \$5, \$6, or \$7 per hundred. This is now the fixed and settled construction of our Constitution as laid down in the case last cited. As we shall hereinafter show, the decision conflicts with what was formerly held by our highest court.

(c) The Legislature may select any class of property, real as well as personal, and provide that in lieu of the direct *ad valorem* taxation thereof, a substitutionary excise tax may be imposed against its owner; for example, the provision for the taxation of personal property of certain public utilities by a gross receipts excise tax in lieu of the *ad valorem*

taxation of the personal property directly. *Jersey Central Power & Light Co. v Asbury Park*, cited *supra*.

(d) The applicable constitutional rule as to exemption from taxation is in some confusion because of two conflicting statements on the subject made by our Court of Errors and Appeals on the same day, 1943, in affirming, on the opinions below, two rulings of the Supreme Court on the subject. *Schwartz v Essex County Board of Taxation*, 129 N.J.L. 129, affirmed 130 N.J.L. 177 (1943); *Rutgers Chapter v City of New Brunswick*, 129 N.J.L. 238, affirmed 130 N.J.L. 216 (1943).

3. *Basic objectives of policy with which a constitutional tax clause should conform*

As a general proposition it may be conceded that the Legislature should enjoy considerable latitude in the field of taxation. Changing economic conditions and governmental requirements make it advisable that the tax clause be sufficiently flexible so that such conditions can be met immediately by changes in legislation without fear of unconstitutionality. But it is submitted that, just as basic policy considerations dictated the necessity for creation of limitations upon legislative power by the incorporation of our present tax clause in the Constitution in 1875, so equally basic policy considerations require revision of the tax clause at this time.

1. The first and most pressing policy requirement arises from the crushing burden of property taxation to which real estate has become subject in New Jersey during the course of the last generation. There has arisen in consequence the impelling necessity that no form of preference or special treatment in the distribution of the tax burden be accorded to any particular class of real property. Yet, there exists today a startling instance of such preferential treatment in the fact that property used for railroad purposes, though provided to be valued for assessment at true value, as is all other real property, is nevertheless accorded the *special fixed* tax rate of \$3 per hundred, in contrast with an average state rate of taxation upon all real property of approximately \$5.50 per hundred in 1947, and local tax rates in many municipalities where large aggregations of real estate used for railroad purposes are situated, in the neighborhood of \$6 and \$7 per hundred. There is no municipality in the entire State wherein any substantial amount of railroad real property is situated, which has a local rate as low as \$3 per hundred, the rate now granted to the railroads by law.

2. The second policy objective involved in this question is that the Legislature should continue to enjoy complete flexibility with respect to imposition of franchise, excise, privilege, income, or other taxes not falling in the category of *ad valorem* property taxation, and, moreover, that as to personal property, tangible or intangible, the Legislature have complete freedom to tax or to exempt, to provide for special rates, substitutionary taxes, or any other device deemed advisable, so long as applied on a uniform and general basis. The present uncertainty of our tax policy on personal property manifested by the conflicting reports of members of the State Tax Policy Commission, evidence the wisdom of leaving the entire subject of personal property taxation and of excise, franchise, privilege, or income taxation, within the unfettered discretion of the Legislature.

With the foregoing introduction we proceed to examine a specific proposal for revision of the tax clause and the detailed supporting data."

(*The session adjourned for luncheon at 12:50 P.M.*)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 1, 1947

(Afternoon session)

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

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

MR. MILTON B. CONFORD (*continues reading of memorandum*):

4. *The tax clause we recommend*

To meet the basic policy considerations adverted to hereinabove, we submit the following as the tax provision to be included in the revised Constitution:

'Property shall be assessed for taxes under general laws and by uniform rules, according to its true value. The burden of direct taxation upon all real property not exempted shall be equal.'

The discussion hereinafter will make clear the basis for the selection of the specific language recommended.

5. *The basis for the adoption of the proposed new tax provision*

The proposed new tax provision consists, in its first sentence, of Article IV, Section VII, paragraph 12 of the present Constitution *verbatim*. The last sentence is new language. The purpose of its inclusion is fairly and frankly reflected by the language employed. It is to secure to the owners of real property throughout the entire State—those who now and for the foreseeable future will continue to bear the substantial brunt of the cost of government—that the burden borne by them incident to their ownership of such real property shall be equal, beyond the power of the Legislature to discriminate and prefer one class of real property as against others.

So far as the first clause is concerned, the repetition of the identical language which has been in our Constitution for 72 years will assure the continuity of the case law construing the same, except only as necessarily modified by the other provision proposed to be added.

As to the new language incorporated in the new proposed provision, the specific effect thereof will be to require that the Legislature not only render property used for railroad purposes assessable at its true value, as all other real estate is required to be assessed, but also that the *rate of taxation* applied shall be *equal* with that applied in the taxation of other real estate, so that all real property will join equally in bearing the common cost of government.

Under the railroad tax law which obtained in New Jersey from 1884 to 1941, all property used for railroad purposes located outside the main stem (meaning the main line of each railroad to a width not exceeding 100 feet), was valued at true value and *taxed at*, or approximating, the *local municipal rate* in the taxing district where such property was situated. The proceeds thereof, known as second class railroad taxes, were exclusively devoted to general municipal uses in such taxing districts.

By the revision of the law in 1941, the proceeds of the second class railroad taxes continued to be devoted to the uses of the municipalities wherein such property was situated, *but the rate of property taxation was fixed at only \$3 per hundred.*

From 1884 to 1906 the main stem property of the railroad companies was taxed for State uses at a fixed rate approximating the average rate of taxation throughout the State, and in 1906 the law was amended so as to fix the *exact* computed statewide average tax rate as the rate to be applied each year against the true value of such main stem property. In the 1941 railroad tax law revision, the \$3 tax rate was also applied to main stem railroad property for state uses, *notwithstanding that the average tax rate was for the State in 1941, \$4.84 per hundred* (the average state tax rate for 1947 is approximately \$5.50 per hundred).

The 1941 railroad tax law provided also for a franchise tax based upon the net railway operating income of the railroads *in lieu of* the prior law providing for the taxation of railroad franchises on an *ad valorem* basis.

Since, for the past 63 years, the proceeds of second class railroad taxation have been devoted to the general uses of the municipalities in which such property is situated, it is fair to presume that that scheme for the distribution of these moneys is a fixed and permanent aspect of our state policy and is likely to continue indefinitely. That plan is one of obvious common fairness, since if the railroad did not occupy the property it would revert to normal local real estate assessment.

It is against that background that we must project the *basic* necessity that railroad real property should be subject to the *same burden* as that to which non-railroad real property is subjected. Realistically viewed, both railroad and non-railroad properties are partners in meeting the fundamental costs of local government and should be treated as such. Under our proposal, the taxation of second class railroad property would be required to be levied at the same rates as those to which local real property is subject. This was the law before 1941. The deliberate fixing of a rate for railroad real property, either higher or lower than that to which local real property is subjected, would be unconstitutional under our proposal. We will demonstrate hereinafter that prior to the decision in *Jersey City v State Board of Tax Appeals*, cited *supra*, 1944, our courts would have held such a discriminatory rate unconstitutional under the present tax clause of the Constitution.

By the same token, the taxation of the *main stem* of railroad property could, under our proposal, constitutionally be fixed at the state average rate of local taxation, just as the statute provided prior to 1941. Such property in legal contemplation is considered to have a general state situs, not necessarily confined to the municipalities through which the railroad runs. The 1906 amendment (*P.L. 1906, p. 121*), providing for the taxation of main stem property at the state average tax rate was held constitutional by the New Jersey Court of Errors and Appeals in *Central R.R. Co. v State Board of Assessors*, 75 N.J.L. 771 (1908), at a time when that court entertained the view that under Article IV, Section VII, paragraph 12, the selection of a rate for the taxation of railroad property was constitutionally subordinate to the principle that the burden imposed should not be greater 'than that which the property of the other taxpayers in the various taxing districts of the State was required to bear' (75 N.J.L., at p. 780). That view was, we submit, the constitutional rule which will be *restored* by the adoption of our proposed modification of the tax clause. Such a clause would render unconstitutional the present provision for the taxation of main stem property at \$3 per hundred at a time when the average tax rate for the State is, as it now is, approximately \$5.50 per hundred.

It is just as important that the state receipts from the taxation of main stem railroad property, used for educational and other important state functions, be maintained at the level of the average state tax rate, as it is that municipal receipts from the taxation of second class railroad property be maintained at the level imposed upon local non-railroad taxpayers.

Nor would the imposition of a franchise excise tax against railroad companies, in addition to an equal real property tax, violate any principle of fair and traditional treatment of corporations. All corporations in New Jersey, of every character, pay some sort of franchise or excise tax over and above the taxation of their real property, on the same basis as the real property of individual taxpayers is taxed. Under our constitutional proposal, the Legislature would be free to levy, or not to levy, a franchise tax against railroad corporations, on a uniform basis applicable to all railroad corporations as deemed advisable.

We proceed at this point to demonstrate:

1. *That our proposal for imposition of an equal tax burden on all real property is consonant with the original purpose of the people in framing the existing Article IV, Section VII, paragraph 12, as a constitutional amendment in 1875; and*

2. *That it is a fundamental dictate of present public policy that the enforcement of that objective should be guaranteed by constitutional provision at this time, rather than left to the uncertainties of future legislation.*

6. *The major motivation for the adoption of Article IV, Section VII, paragraph 12, was the attainment of equality of tax burden as between railroad property and other property*

The Constitution of 1844 was silent with respect to taxation. Prior to 1851 the property tax system in New Jersey consisted of a combination of specific taxes and *ad valorem* taxes. A specific tax is one which imposes a specific sum by head or number, or some standard of measurement other than the value of the property. An *ad valorem* tax is one upon the property measured by its value. In 1851, by an act of that year (P.L. 1851, p. 271), specific property taxes were eliminated and all lands and personal estate were required to be taxed 'at the actual value thereof.' Railroads were taxed prior to 1875 on the basis of provisions contained in the original railroad corporate charters. These were not uniform, but generally provided for initial periods of total tax exemption and thereafter a tax either of a percentage of the cost of the road or its paid-in capital, or a fixed amount for each person carried and each ton of merchandise transported. Some of the charters provided that they were *subject to repeal and amendment*, while many others did not so provide and were held to constitute *irrepealable* contracts between the State and the railroad corporation. See *State v. Minton*, 23 N.J.L. 529, 531, (1852); *New Jersey v. Yard*, 95 U. S. 104 (1877); *State Board of Assessors v. Morris & Essex R. R. Co.*, 49 N.J.L. 193, 198 (1866).

Although in the beginning the total tax burden of each railroad company was, on the average, fairly commensurate with the local rates of taxation upon real property generally, *ultimately such charter provisions resulted in a serious inequality in the distribution of the tax burden for the reason that the general cost of government ran beyond the railroad tax rates.* See the opinion of Mr. Justice Joel Parker in *Central R. R. Co. v. State Board of Assessors*, 48 N.J.L. 146, at page 294 (1886).

These rising costs, greatly accentuated by the Civil War and by the depression of 1873, are best illustrated by the increase in the average rate of taxation per hundred dollars of assessed value as set forth in the decennial report published by the United States Census Bureau for the year 1913. The following table contains the figures which are pertinent to the historical development now being discussed, as well as to the change in the taxation of railroad property after 1875:

YEAR	AVERAGE TAX RATE PER HUNDRED DOLLARS OF ASSESSED VALUE
1860	\$0.49
1870	1.19
1880	1.28
1890	1.58

In the face of the greater financial needs of government, the people were confronted with contracts between the State and the railroads, some of which were irrevocable, and the remainder of which the Legislature would not undertake to repeal, perhaps persuaded by a concept of moral obligation not to exercise a right of amendment present in a contract based upon a consideration which the State exacted and received from the incorporators, and perhaps by the fact that the outstanding utility of that day, the Camden & Amboy R. R. & Transportation Company and Delaware & Raritan Canal Company, constituting the so-called 'Joint Companies,' held irrevocable charters (acts approved February 4, 1830).

The general dissatisfaction with the *fixed railroad tax burden*, in the light of the *increasing burden to which other taxpayers were subjected* (note the similarity to the present-day situation), was manifested by determined, but essentially unsuccessful, efforts by taxing districts to tax property of railroad companies in excess of the charter provisions. See *State v Commissioners of Mansfield*, 23 N.J.L. 510 (1852); *State v Minton*, 23 N.J.L. 529 (1852); *State v Newark*, 26 N.J.L. 519 (1856); *McGavisk, Collector v State, Morris & Essex R.R. Co.*, 34 N.J.L. 509 (1869); *State, The New Jersey Railroad & Transportation Co. v Hancock*, 35 N.J.L. 537 (1871); *State, Camden & Amboy R. R. & Transportation Co. v Woodruff*, 36 N.J.L. 94 (1872).

The power partially to remedy this situation rested with the Legislature, since the bulk of the railroad charters were revocable. *The people, however, were unable to persuade the Legislature to exercise that right.* In 1862 there was fleeting success, when, in the enactment of a general tax law (P.L. 1862, p. 334), provision was made for the taxation (p. 349) of all private corporations of this State, except those which by virtue of any irrevocable contract in their charters or other contracts with this State, are expressly exempted from taxation.' Our courts seized upon the word, 'irrevocable,' to arrive at the result that the Legislature had thereby indicated its intention of taxing under that law all railroad companies whose charters were revocable. *State v Miller*, 30 N.J.L. 368 (1863), affirmed 31 N.J.L. 521 (1864); *State, Jersey City & Bergen R.R. Co. v Jersey City*, 31 N.J.L. 575 (1865); *State, Warren R.R. Co. v Person, Collector*, 32 N.J.L. 566 (1867).

The Legislature quickly reacted to these decisions, and, by a supplement adopted in 1866 (P.L. 1866, p. 1078, at p. 1084), the word 'irrevocable' was omitted. The judiciary was thereby *compelled* to conclude that the Legislature intended to leave in force the contract or charter provisions. *State, Camden & Burlington R.R. Co. v Cook*, 32 N.J.L. 339 (1867); affirmed 33 N.J.L. 474 (1868); *State, Orange & Newark Horse R.R. Co. v Douglass, Rec'r.*, 34 N.J.L. 82 (1869), affirmed 34 N.J.L. 485 (1869).

The decisions speak of the rising resentment of the people in the face of the increased burden of government on other than railroad property. In *State v Miller*, 30 N.J.L. 368, in which the court interpreted the *Laws of 1862, page 344*, to impose a tax upon railroad companies with revocable charters, this reference was made, at page 374: '* * * in these times of heavy taxation, the inconvenience of depriving many townships of the right to tax valuable real estate within their limits.'

Alleviation of the general tax burden by equalizing all of the railroad companies was rendered difficult, even as to those roads which had revocable charters *because of the thorough-going domination by railroad interests of the Legislature*, a history of which has been vividly described by Professor Wheaton J. Lane in his book *From Indian Trail to Iron Horse* (Princeton University Press, 1939), chapter 12, entitled 'Monopoly and Politics' (pp. 323-370). It is there revealed that the railroad monopoly which centered around the Camden and Amboy Railroad, the Delaware and Raritan Canal, the so-called 'Joint Companies,' had succeeded in dominating the political picture and controlling a substantial portion of the press. *It had repeatedly demonstrated its ability to get from the Legislature such legislation as it desired, and to suppress legislation which was inimical to its interests.*

By 1873 several circumstances combined to provide the people of the State with their opportunity to banish tax inequality and to effect constitutional changes to prevent its recurrence. As already stated, the tax burden resulting from the Civil War was great. In 1869 the 'Joint Companies,' which by then had assumed control of additional roads under the new corporate name of United New Jersey Railroad and Canal Company, leased its lines for 999 years to the Pennsylvania Railroad Company, which locally was regarded as a 'foreign company.' With this lease the activities of the state monopoly naturally lost some of their vigor. In addition, there was a severe panic in 1873. *The combination of these circumstances set the stage for reform.*

In 1873 the Legislature finally adopted a general tax law applicable to the taxation of all railroad property (*P.L. 1873, p. 112*). The title of the act is 'An Act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption.' The preamble is illuminating. It reads as follows:

'Whereas, for the encouragement of railroad enterprise, laws creating and regulating railways in this state usually provide for the payment by them, in consideration of their chartered privileges, of a fixed rate upon their capital stock or the cost of their works, in lieu of all other public impositions whatever; and whereas, it is nevertheless contended that the property of such corporations being largely acquired for, or through the growth and extension of their prosperity, should contribute to the charges and expenses essential for municipal and county purposes; and whereas, it is desirable in order to the avoidance of litigation and future dissatisfaction that such municipal and county taxation shall be authorized, and that the same shall be permanently fixed and regulated;'

With reference to railroads having irrevocable charters, the Legislature addressed this appeal and offer (*page 115*):

'And whereas, certain railroad corporations owning or occupying railroads in this state, claim exemption from all taxation, whether state, county or municipal, further than is provided for by their charters or by special laws for their benefit now existing, which claims, even if legal, subject said corporations to public ill will, and make it their interest to forego the same and agree to the scheme of taxation hereby established; now, therefore,

'10. *Be it enacted*, That any such railroad corporation may within six months from the approval of this act, make and execute under their common seal and the signature of their president, and file in the office of the secretary of state, a declaration in writing, surrendering all claim to exemption from taxation by them heretofore had or made, and accepting the provision of this act in lieu thereof.'

The effect of the amendment was to condemn laws which were not 'general.' Non-general laws are those which are either 'local' or 'special.' Local laws were those which enabled specific municipalities to levy taxes without conformity to the general tax laws. See *North Ward National Bank of Newark v Newark*, 40 N.J.L. 558 (1878). The special laws designed to be eliminated by the constitutional amendment recommended in 1873 were obviously the *repealable taxation contracts* in the railroad company charters. The railroads were the only group which held such special legislation for their taxation. See *State v Miller*, 31 N.J.L. 521, at *page 527* (1864), wherein it was stated:

'* * * I am not aware of any corporations in the state to which this exception applies but to railroad companies. Various of the railroad companies of the state, perhaps all of them, have, by their charters, contracts with the state, by which they are expressly exempt from taxation; some of them are repealable, and some of them are irrevocable contracts. And these two kinds are the only known contracts between the state and any of its corporations which exempts them from taxation, and these two are in all cases substantially alike, except that one is repealable and the other is not; but they are certainly both contracts with

the state, and they are certainly both exemption contracts. * * *

The purpose of the people in amending the Constitution in 1875 was apparent. They had succeeded, by the law of 1873, in adopting general legislation relating to the taxation of railroads, which superseded the charter provisions. They proposed by the 1875 constitutional amendment to prevent any Legislature from ever repealing such legislation and thereby reviving the vitality of the charter exemptions, as the Legislature of 1866 had done when it amended the law of 1862 which, as noted above, had been construed by the courts to result in the taxation of railroads under the general tax law. It was the intention of the people to prevent the Legislature from ever again subjecting the State to the evil of unequal distribution of the tax burden.

Thus, we find that the constitutional amendment of 1875 recommended by the legislative resolution of 1873 was designed to accomplish two things:

(1) That special contracts of exemption should be eliminated in the future under the requirement of 'general laws' for the taxation of property (including that of the railroads); and

(2) That assessments should be 'according to true value' in order to prevent the use of preferential specific taxes, such as were contained in the railroad charters.

Other constitutional amendments adopted simultaneously with Article IV, Section VII, paragraph 12, at the special election in 1875, which had for their purpose the prevention of special and preferential treatment of railroad and other special interests, were Article IV, Section VII, paragraph 11, which prohibits legislation granting special privileges in a number of classifications; Article I, paragraph 19, which prohibits donations of money or property, or loans by municipalities to private individuals and corporations; and Article I, paragraph 20, which prohibits the donation of land or appropriation of money by the State or any municipality to private corporations.

Every court decision after 1875 indicates that the tax amendment was regarded as designed to *prevent* 'the inequality of taxation arising from local and special laws.' *State, North Ward National Bank v Newark*, 39 N.J.L. 380, 391 (1877), reversed on grounds not here pertinent, 40 N.J.L. 558 (1878). In *State, Trenton Iron Co. v Yard*, 42 N.J.L. 357 (1880), at page 363, the court stated that while the tax amendment permitted the classification of different types of corporations, such as railroads, banks, etc., for tax purposes, such classification was designed 'to attain to equal and uniform results.'

In *Stratton v Collins*, 43 N.J.L. 562 (1881), after referring to the same power of selection described above, the court said, at page 565:

'The property to be taxed being thus indicated, the direction that it shall be assessed by uniform rules, according to its true value, becomes then applicable. This direction requires, and is fulfilled by such regulations as should impose the same percentage of its actual value upon all the taxable property in the township for township purposes, in the county for county purposes, and in the state for state purposes. Exchange Bank v Hines, 3 Ohio St. 1; State, Vail's Ex'rs., pros. v Runyon 12 Vroom 98.'

The purpose of classification of different types of corporate property as being to permit special techniques of valuation appropriate to such classes of property and *not* to attain an *unequal* tax burden with respect to such several classes of property, was stated as follows by the United States Supreme Court in *Tappen v Merchants National Bank*, 19 Wall. 490, at page 504, as follows:

' * * Absolute equality in taxation can never be attained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property. Railroads, banks, partnerships, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence, require different machinery for the purposes of their taxation. The*

object should be *to place the burden so that it will bear as nearly as possible equally upon all*. For this purpose different systems, adjusted with reference to the valuation of different kinds of property, are adopted. * * * *

In 1884 there was adopted a general tax law for the taxation of railroad property, which, in substance, continued as the basic law until 1941. The main provisions of the act were discussed hereinabove. In 1886 this law was sustained as being in conformity with the constitutional amendment. *Central R. R. Co. v. State Board of Assessors*, 48 N.J.L. 146 (1886) reversing 48 N.J.L. 1 (1886). The decision is contained in a composite of seven separate opinions of the judges of the Court of Errors and Appeals, occupying over 200 pages in the *Law Reports*. The Supreme Court opinion reversed by the Court of Errors and Appeals was rendered by Chief Justice Beasley.

The conflicting views manifested in these eight opinions of our highest judges was substantially cleared up in 1908 when our Court of Errors and Appeals had occasion to examine the effect of the decision in 48 N.J.L. 146, in passing upon the constitutionality of the 1906 amendment calling for a state average tax rate to be levied against main stem railroad property. *Central R.R. Co. v State Board of Assessors*, 75 N.J.L. 771. The Central Railroad Company in that case objected to the constitutionality of this provision for the reason that the average tax rate was *higher* than the rate of one-half per cent theretofore imposed upon main stem property for state uses. The railroad contended that this was a violation of Article IV, Section VII, paragraph 12. This position was rejected by Chief Justice Gummere, writing the opinion for the Court of Errors and Appeals.

In discussing the railroad's reliance upon the decision of the Court of Errors and Appeals by the seven judges in 48 N.J.L., page 146, *et seq.*, *supra*, the Chief Justice said that that decision,

'established the right of the legislature to arbitrarily fix such rate for the taxation of this class of property as it might from time to time see fit, provided that the burden imposed was not at any time greater than that which the property of the other taxpayers in the various taxing districts of the state was required to bear.'

This decision by the highest court reaffirmed two basic principles: (1) that the true purpose of classification of railroad property is to ascertain the true value thereof rather than to permit preferential or discriminatory treatment; and (2) that the selection of a rate of taxation is subordinate to and in aid of the fundamental proposition that *the distribution of the burden of taxation as between railroad and other property may not be unequal*.

This continued to be the general understanding of the effect of the constitutional provision until the enactment of the Railroad Tax Law of 1941, which fixed the low-fixed property tax rate of \$3 per hundred on all railroad property. A number of municipalities attacked the constitutionality of that act on the ground that it violated the principle of equality of property tax burden as between railroad and non-railroad property. The Supreme Court rejected the position of these municipalities, and, without in any way attempting to distinguish the language of Chief Justice Gummere in the 75 N.J.L. case, hereinabove quoted, said, 133 N.J.L., at page 205 (1945):

'However morally persuasive may be the philosophy underlying the contentions made that there can be no constitutional justification (Cf. Article I, paragraph 16, and Article IV, section VII, paragraph 12, State Constitution), under our system of spreading the burden of taxation equally on all property, for imposing a lesser tax burden on property used for railroad purposes than is imposed on other property, that contention is logically inconsistent and legally without merit. It is inconsistent with the admission that property used for railroad purposes may properly be separately classed and runs afoul of the afore-stated cases. Equality of the burden upon all taxable property can only

be attained if and when there shall be but one general tax law applicable alike to all taxable property irrespective of its particular use. That, however, continues to be the "dream unrealized." *Central Railroad Co. of New Jersey v State Tax Department*, 112 N.J.L. 5, 15; 169 Atl. Rep. 489, *cer. den.*, 293 U.S. 568; 79 L. Ed. 667. There is no constitutional objection either to the classification or rate features of the legislation in question.

As to this feature of the case, the decision was affirmed by the Court of Errors and Appeals, 134 N.J.L. 240, at page 242 (1946).

Thus, for the first time since the adoption of the present tax clause in our Constitution in 1875, our courts have construed that clause to permit the Legislature not only to segregate railroad property for valuation purposes, but also to deliberately assess against it a lower rate than that paid by other property, notwithstanding the plain statement to the contrary by Chief Justice Gummere in 1908. Under the Constitution as now construed by our courts, the Legislature could constitutionally place a rate of \$1. or 50¢ or 10¢ per hundred dollars on railroad real property, regardless of how high the local municipal rate on all other real property might be.

It is particularly to be noted that in so holding, our Supreme Court and Court of Errors and Appeals placed no reliance on the fact that the railroad companies were required to pay a franchise tax in addition to a property tax under the 1941 law.

Thus, the first basic ground for the adoption of the proposal which we now advocate is the restoration of the principle of equality of burden of real estate taxation on all real property, as was intended by the framers of our present tax clause in 1875 and so understood by our courts before 1945.

7. *The financial needs of the State and its municipalities, and the actual operation of the Railroad Tax Law of 1941, as requiring a revision of the tax clause*

The Railroad Tax Law of 1941, fixing a flat low tax rate of \$3 per hundred for railroad property, plus a variable franchise tax, has wrought harm and injustice of the first magnitude upon the State itself, and upon its municipalities which share in the proceeds of railroad taxes. It is a story that needs no retelling at this time that all of the costs of government have risen tremendously since 1941, and that the purchasing power of the dollar today is, conservatively, not in excess of 60 per cent of what it was prior to 1941.

Gross railroad taxes assessed against the railroads of New Jersey under the *Revised Statutes* (the former tax law) from 1935 to 1940, inclusive, were as follows:

YEAR	GROSS RAILROAD TAXES ASSESSED UNDER <i>Revised Statutes</i> , 1935 TO 1940, INCLUSIVE	AVERAGE 6-YEAR PERIOD
1935	\$19,252,591.79	\$19,238,814
1936	19,418,206.95	
1937	19,361,765.29	
1938	20,364,920.76	
1939	18,738,704.13	
1940	18,296,689.39	

For the year 1947, the railroads of the State will pay under the new law a total of approximately \$14,850,000, representing property taxes of \$13,230,000, and franchise taxes of \$1,620,000. The approximate \$15,000,000 which the State and its municipalities will receive this year from the railroads have a purchasing power equal to what \$9,000,000 would have purchased before 1941. Thus, the *real*, as distinguished from numerical, tax dollars which the railroads are paying today, as contrasted with the average paid prior to 1941, represents a reduction from \$19,240,000 to \$9,000,000, or greater than 50 per cent.

Our municipalities, with the rising costs of government caused by inflation, increased salaries and costs of materials, now have local tax rates of \$5, \$6, and \$7 per hundred. Railroads continue to pay only \$3 per hundred. Not only do they escape a just share of the tax burden, but the already heavy cost of government to other taxpayers is inordinately aggravated thereby. Instead of being subjected to *increased* taxes on their real estate, like all other taxpayers, to meet existing conditions, the railroads are receiving substantial *reduction* in taxes.

During the same period from 1941-1947, the records of the State Department of Taxation and Finance show that while the valuations of specific railroad real property have remained practically the same, there has been added by the railroads of this State to their physical plant and equipment property having a value in excess of \$60,000,000, so that the *reduced railroad taxes* are being levied upon 17 per cent *more property* than the railroads held in this State in 1941.

If the railroad tax law had not been changed in 1941 and the railroads were taxed in 1947 on the basis of equality with other real property which obtained prior to 1941, they would have paid this year \$25,676,000 instead of the \$14,850,000 (property and franchise total), which they will pay under the new law. *This represents a loss to the State and its municipalities of almost \$11,000,000. That \$11,000,000 is necessarily saddled on home-owners and all other real estate taxpayers generally.*

\$5,500,000 of this lost \$11,000,000 would accrue to the State itself, which, under R.S. 18:10-31, would use it for educational and school purposes generally, and for special schools for the deaf, colored, vocational, agricultural, etc., schools, teachers' pension and annuity funds and rural public schools. The State sorely needs this money. Testimony was recently given before the Committee on Taxation and Finance of the Convention that if new revenues for increased state expenses are not found, an income tax will be inevitable. A simple return of property tax equality upon railroad property would realize at least part of what the State needs, as well as give some relief to real estate taxpayers in our municipalities.

The primary argument on the basis of which the Legislature was persuaded to reduce the railroad property tax rate to \$3 per hundred was that the railroads would, in addition, pay a substantial franchise tax to the State during good times. But the actual story of railroad franchise taxes in this year of national prosperity presents a most disheartening picture to those interested in principles of justice in taxation. Franchise taxes paid to New Jersey by all railroads since 1941 have been as follows:

1941	\$ 4,026,812.90
1942	5,851,283.71
1943	11,070,476.10
1944	9,271,040.39
1945	7,440,151.78
1946	3,659,000.00
1947	1,620,000.00 (approx)

What the yield will be next year and thereafter is anyone's guess. It cannot reasonably be optimistic. There are those who would respond to this showing by asserting that the Legislature may be expected to correct the situation. But it should never have been constitutionally possible for the enactment of such legislation in the first place. *Equality of real estate taxation is a basic right of taxpayers.* The Constitution should guarantee it. Moreover, the same argument was unsuccessfully used in 1875. We submit that there is no justification for any expectation of legislative action without constitutional mandate. Both in 1946 and in 1947 bills were introduced in the Legislature at the behest of the state administration and the municipalities affected, to overcome a deliberate bookkeeping evasion of the franchise tax provisions of the law by the Central Railroad Company of New Jersey, under which the franchise tax payable by that company was reduced to the statutory minimum of \$4,000 per annum, as against an annual average tax expectancy of \$900,000 per annum when the

1941 law was passed. The corrective measure passed the 1946 Assembly and died in the Senate. The similar 1947 measure was introduced in the Assembly but got no further. The figures just cited are taken from the record made by the Central Railroad itself in proceedings before the Interstate Commerce Commission in 1946 for approval of the corporate manipulation by which the railroad succeeded in depriving the State of this annual \$900,000, with the tacit consent of the Legislature. Similar evasions of the law by other railroads are a distinct possibility. For all practical purposes, the railroad franchise tax law is now a dead letter.

Maneuvers comparable to this one by the Central Railroad Company of New Jersey are part of the reason for the reduction of railroad franchise taxes practically to the vanishing point.

With a Legislature unwilling to correct railroad tax preferences to the relatively minor extent just noted, what reasonable expectation have the people of this State that the Legislature will, short of a constitutional mandate, correct the shocking injustice to our real estate taxpayers at large wrought by the \$3 railroad tax rate in the railroad tax law of 1941? *We submit that the existing situation represents a crisis in every sense comparable to that which in 1875 led the people of this State to adopt the present tax clause of our Constitution.*

8. *Equal tax provisions in other state constitutions*

The language which we have submitted by way of revision of the tax clause has been carefully framed to achieve the result required by the present exigency. Language of comparable import, specifically requiring 'equal' taxation of property generally, or the treatment of property of corporations and railroads 'in the same way' or 'the same as' property of individual taxpayers, is found in 17 states.

Alabama, Article XI, Section 217: The property of corporations, associations and individuals 'shall be taxed at the *same rate*.'

Arkansas, Article XVII, Section 5: The legislature shall provide for taxation to be '*equal and uniform throughout the State*.' No one species of taxable property 'shall be *taxed higher* than another species of property of equal value.'

Florida, Article IX, Section 1: 'The legislature shall provide for a uniform and *equal rate of taxation*,' except that special rates may be provided for intangible property.

Indiana, Article X, Section 1: The legislature shall provide for a 'uniform and *equal rate of taxation*.'

Iowa, Article VIII, Section 2: 'The property of all corporations for pecuniary profit shall be subject to taxation *the same* as that of individuals.'

Kansas, Article XI, Section 1: 'The legislature shall provide for a uniform and *equal rate of assessment and taxation*,' except for mineral products and intangibles.

Kentucky, Section 174: 'All corporate property shall pay the *same rate of taxation* paid by individual property.'

Maine, Article IX, Section 8: 'All taxes upon real and personal estate shall be apportioned and assessed *equally* according to the just value thereof,' except that a lower rate is allowed upon intangibles.

Michigan, Article X, Section 3: Property assessed by the State Board of Assessors is to be taxed at the *average rate* of local taxation throughout the state. Article X, Section 5, provides that railroad property is to be taxed by the State Board of Assessors.

Mississippi, Article VII, Paragraph 181: 'The property of all private corporations for pecuniary gain shall be taxed in the *same way* and to the *same extent* as the property of individuals.'

Nevada, Article XI, Section 1: The legislature shall provide for 'uniform and *equal rate of assessment and taxation*,' except that mines are to be taxed solely on their output.

South Carolina, Article X, Section 1: The legislature shall provide for 'uniform and *equal rate of assessment and taxation*,' except as to mines and intangible property.

Texas, Article VIII, Section 1: 'Taxation shall be *equal* and uniform. * * * * 'All property * * * * whether owned by natural persons or corporations * * * * shall be taxed in proportion to its value * * * *'

Section 5: '*All property of railroad companies* of whatever description lying or being within the limits of any city or incorporated town * * * * shall bear its proportionate share of municipal taxation * * * *'

Utah, Article XIII, Section 3: 'The legislature shall provide by law a uniform and *equal* rate of assessment and taxation on all tangible property in this state, according to its value in money * * * * so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property,' with certain modifications as to live stock.

Virginia, Article XIII, Section 176: The tangible property of *railroads* is to be taxed '*at such rates* of taxation as may be imposed * * * * upon the real estate and personal property of *natural persons*.' In addition, railroad corporations shall pay a franchise tax on gross receipts.

Washington, Article VII, Section 1: 'All real estate shall constitute one class' for purposes of taxation.

West Virginia, Article X, Section 1: 'Taxation shall be *equal* and uniform throughout the state and all property, both real and personal, shall be taxed in proportion to its value * * * *', subject to certain qualifications as to agricultural property and intangible property.

It is thus seen that the proposal for a constitutional provision requiring an *equal* burden of taxation on *all real property* is neither radical nor revolutionary. As a matter of fact, most, if not all, states, whether by constitution or statute, provide for a property tax burden upon railroad corporations *equal* to that imposed upon real estate generally, plus a franchise tax.

9. Conclusion

In conclusion, our proposal for revision of the tax clause of the present Constitution would carry forward the sound and practically understood and adjudicated technique of assessment of real property 'according to its true value' (construed to mean at true value). The Legislature would be given complete freedom with respect to the method of taxation or exemption of *personal property* of every kind and of corporate franchises, so as to promote flexibility of personalty taxation and enable the Legislature to meet special needs and conditions as they arise from time to time. The language of our present tax clause, which we would carry into the new clause, permits exemption of any class of *personal property*. *Schwartz v Essex County Board of Taxation*, 130 N.J.L. 177 (1943).

The fiscal economy of the State and its municipalities, and their *vital dependence upon the proceeds of real estate taxation* as the main support of government, make it imperative, on the other hand, that *equality of burden* of real property taxation be absolutely *guaranteed* beyond the possibility of interference by any Legislature. This would at the same time assure elementary and basic tax justice to all realty taxpayers."

CHAIRMAN WILLIAM T. READ: Thank you, Mr. Conford, for your statement.

We will next hear from William J. Gaffney, Secretary of the New Jersey Highway Users' Conference and Executive Secretary, New Jersey Petroleum Industries Committee. Mr. Gaffney.

MR. WILLIAM J. GAFFNEY: We wrote the Secretary of the Convention last week requesting a public hearing on the matter of a dedicated highway fund, which communication, I understand, has been referred to this Committee. In sitting here today, I find that this Committee is arranging for a public hearing on the tenth of July. Will that be the only public hearing that you will conduct other than these sessions?

MR. JOHN J. RAFFERTY: It is the only scheduled hearing so far.

COMMITTEE MEMBER: These are supposed to be public.

MR. GAFFNEY: There are some 18 organizations in the Conference that are interested in highway transportation, and all of them desire to be heard on the question of a dedicated highway fund. I hope they will be given the opportunity to be heard, but in hearing the discussions on tax exemptions I am afraid the tenth of July will be pretty well taken up. I am not going to attempt today to outline to you gentlemen why we feel that it should be a basic and fundamental part of the Constitution. I think the respective organizations desire to present their views separately.

COMMITTEE MEMBER: Why don't you plan to have them there?

MR. RAFFERTY: If we don't reach you, we will have another day. The tenth is the only scheduled hearing so far. It may be the day will be divided into two items—in the morning, for example, for exemption, and the afternoon for dedication.

CHAIRMAN: You want to be heard on the dedicated fund?

MR. GAFFNEY: Yes.

CHAIRMAN: You are in favor of the proposal made in 1944 in the Finance Section, paragraphs 2 and 3?

MR. GAFFNEY: We are not, sir. We would like to have an amendment to that if there is to be one fund established under the new Constitution.

CHAIRMAN: They are brand new to a certain extent?

MR. GAFFNEY: Yes. We made a proposal at that time. We are ready to make a parallel proposal if the Constitutional Convention decides there is to be one general state fund for all revenues. If not, we desire to have a specific dedication.

CHAIRMAN: You are a highway man?

MR. GAFFNEY: Some of the newspapers call us that. The Highway Users' Conference is operated on a budget of \$350 or \$400 a year. We are not cement lobbyists or highway men.

If you think we will be reached on the tenth of July in view of all the testimony on exemption, I can tell you we will be ready. I am fearful that we might not get the time.

CHAIRMAN: How much time do you want?

MR. GAFFNEY: We have approximately 18 to 20 presentations, not all of them as long as you have heard today, two and a half or three hours. That would be presenting the separate viewpoints. The automobile group desires to make a statement, the separate state farm groups, and so on.

MR. SIGURD A. EMERSON: Couldn't you delegate one or two spokesmen to appear?

CHAIRMAN: Do they disagree on the method?

MR. GAFFNEY: No disagreement.

CHAIRMAN: Can't they identify themselves and say they are in accord?

MR. GAFFNEY: We will attempt to do that. We don't have any orators in our group.

CHAIRMAN: Try to get ready for the tenth—one spokesman with all component parts of your organization voicing their accord.

MR. EMERSON: Why don't you prepare a short memorandum which you can file in the event you should not get on?

MR. GAFFNEY: We intend to have a brief which will probably contain all the presentations of all the committee, a brief for each member of the Committee.

MR. RAFFERTY: You desire also the opportunity to have oral expression?

MR. GAFFNEY: Yes.

CHAIRMAN. Thank you, Mr. Gaffney. We next have Charles J. Dodge, Managing Director, New Jersey Society of Professional Engineers, 100 Sicard Street, New Brunswick. Mr. Dodge.

MR. CHARLES J. DODGE: Gentlemen, I will try to temper the lateness of the hour and the humidity with as much brevity as possible.

Mr. Chairman, Mrs. Streeter and gentlemen: You will recall a week ago you received from our state headquarters a resolution¹ which had been approved by the trustees of our State Society of Professional Engineers of New Jersey, in opposition to the diversion of highway funds. Upon the invitation of your Secretary, Judge Rafferty, I am here today in somewhat a limited way to elaborate on the resolution itself.

Engineers, and when I say engineers, I mean professional engineers—that means all branches of engineers who are licensed under the laws of New Jersey to practice engineering—are opposed to diversion of highway funds for the following reasons:

As in the case of all non-profit organizations, we have in our articles of incorporation a sincere clause: "We wish to promote the safety and welfare of everyone." We definitely feel that highway safety and services definitely contribute toward the safety of everyone. Engineers are used to exact planning based upon known circumstances and facts. In other words, when a program is anticipated and is about to be promulgated, engineers are used to having facts and facilities available at times in the future, else their entire program must fail. We feel that the diversion of highway funds would disastrously affect the economic status of New Jersey.

¹ This resolution is included in the *Brief of New Jersey Highway Users' Conference*, which appears in the Appendix to these Proceedings.

Take the subject of transportation itself, which is the essence of the use of highways. Local vegetables, milk, oil, coal and the like, to a great extent are transported by truck. Therefore, we feel that we must provide our farmers, for example, with adequate transportation facilities to go to market. That is basic, of course. What thought arises in our mind when we say we must provide adequate facilities? Competition comes to mind, competition with the States of New York and Pennsylvania. Competition with these two states results; and we all know that in competition, survivorship is important. We do not mean that the State of New Jersey is going to cease as a State, but it will be affected from an economic standpoint. A man coming from a shore region must get to the New York market; a man coming from the South Jersey region must be able to get to Philadelphia in such a time that he can profit from the purchase of certain commodities and materials in competition with the person or farmer from Pennsylvania or New York.

Take the case of the truck strike. We all know the tremendous paralysis that affected us for two or three days because of the lack of trucking facilities. The service of business enterprise depends on ability to meet competition and ability to operate efficiently. Small savings in time, money or labor may enable a businessman or a farmer to survive where, without them, he would fail. The ability to effect these savings often depends upon the availability of quick and economical transportation facilities. Consequently, the condition of New Jersey's highway system may determine the ability of both our farmers and manufacturers to meet out-of-state competition.

As to the safety angle, one of three factors is the cause of nearly every traffic accident: the driver, the automobile or the road. Present purposes exclude the first two. The third factor is the road itself. The opinion formerly prevailed that a driver could and should adjust himself to any road condition. However, that opinion no longer persists among engineers who have devoted study to the traffic safety problem. Highway transportation has advanced and drivers have grown to accept a reasonable "safety expectancy." The death traps of which we hear are called that because the physical condition of the road falls below that "safety expectancy." They are hazards with which motorists are unprepared to meet and contend. To protect motorists from these accidents it is necessary to eliminate highway hazards as far as possible. Some of the hazards readily understood are: sharp curves, steep grades, inadequate sight distance, blind intersections, narrow pavements and bridges, lack of proper side shoulders, slippery surfaces, grade crossings, and road designs which permit opposing lines of dense traffic to encroach upon each other's lanes

The progress that has been made and will be made in the future depends upon the use of all motor vehicle funds for highway construction and maintenance. The highway engineers cannot build safety into the highways nor build out accidents unless they are permitted to do the job of building. If the funds provided by motorists for this purpose are diverted to other uses, the builders are helpless. They cannot hire men nor buy materials and tools without money.

Ask yourself if it is important for highway construction to progress and keep pace with the demands of motor transportation. Is it important to provide a reasonable safety for the millions of our citizens who drive or ride in motor vehicles? There is only one answer—to make it sure, stop diversion by constitutional amendment.

An amendment against diversion would permit long-range planning. Under New Jersey's present system, highway revenues may be diverted in any session of the State Legislature from state and local highway and city street use to any other purpose. For this reason the State and local subdivisions of government have been unable to plan any long-range program with any degree of certainty. The adoption of an amendment will assure highway officials that revenue intended for improved travel facilities will not be diverted and, therefore, their street and highway programs may be planned with the assurance that such plans may be carried out approximately as programmed.

On the subject of post-war employment, an extensive post-war program involving many millions of dollars has been adopted, with the dual purpose of modernizing our highway system and serving as a cushion against unemployment. To accomplish this will require all of our reserves, all current motorists' revenues, as well as all monies received through federal aid. It is imperative that none of these funds be diverted to other purposes if we are to provide good jobs for our returning servicemen and released war workers and to supply modernized highways for the people in all sections of the State.

You will be interested in knowing, gentlemen, that since 1917—I bring this fact up to show that in our opinion, in a great many instances, past Legislatures have been, well, conservatively speaking, inconsistent and incongruous—since 1917 past Legislatures have legislated 2,300 state miles, and also since 1917 less than 1,700 state miles have been built. Obviously, one-third less than the number of miles legislated have been actually built, and those same Legislatures had complete control of the funds. We do see a gross inconsistency on the part of the Legislatures existing.

COMMITTEE MEMBER: How many of those 2,300 miles were legislated prior to 1941?

MR. DODGE: I am not able to break that down for you. I do

know that since 1917, there were 2,300 miles.

COMMITTEE MEMBER: Is it conceivable that one of the reasons for the failure is due to the fact that for the six years of the war, we had no road construction?

MR. DODGE: No. I believe that would be only a minor contributing factor.

I will need only about four more minutes. As you probably know, approximately \$150,000,000 has been diverted in approximately the last 15 or 16 years. We feel that the practice of diversion might become a habit. There is no guarantee of that, but human nature being what it is, it might be that way.

MR. EMERSON: How many miles would that have constructed?

MR. DODGE: What?

MR. EMERSON: \$150,000,000.

MR. DODGE: Frankly, I am not prepared to answer that.

I would like to digress for a moment. During the war I happened to be assistant to Leonard Dreyfuss, State Civilian Defense Director. Organizing defense councils as part of my duties, I had to work with certain officers in working out an evacuation program for New Jersey. It is all past now, but, at the same time, you gentlemen are here with a very serious job to do, and only yesterday we saw in the paper that a group of gentlemen in Princeton at a meeting almost prophesied an atomic war in 1955. You have to take into consideration a future national defense program in which New Jersey will be an integral part. I do know the defense system, the evacuation system. We had very fine secondary and tertiary roads. We did not know they were impossible to handle the evacuation. We don't realize, if we are faced with a great crisis again, the tremendous job that New Jersey highways will have to do. That occurred to me today as I was here; I did not come prepared to talk about it.

As you all know, this form of taxation is a very special type of tax. At the same time, we feel that the use of highways today affects everyone. We don't call everybody highway users, but we say that, indirectly, everyone is affected and needs protection. We feel that everyone should have a voice in whether monies should be used for a certain use. When a person pays a three-cent tax, the three-cent tax is an indirect charge to use the highways. We feel that that person has a right to expect that the money will be turned back into the highways themselves.

To wind up, why do we feel that this calls for a constitutional provision? 1: As I have said, the Legislatures in the past have been somewhat inconsistent in legislating a certain number of miles and not permitting the same number of miles to be built. Twenty states have dedicated funds for highway purposes. A great amount of thought must have gone into the work of people framing these amend-

ments—Texas is the twentieth state—so that ultimately a constitutional provision exists. That is 40 per cent of the states of our Union. We feel that the problem is basic and should be left to the people under referendum to decide. No matter what your thoughts are, *pro* or *con*, we do feel that it should go to the people of New Jersey for final decision. We are not in a position to attempt to frame a suggested clause—that is your job—but we do ask that you seriously consider a clause in the proposed Constitution as a separate section, looking at it realistically, dedicating all funds received from highway purposes—fees plus the three-cent tax—to highway purposes only.

COMMITTEE MEMBER: Is it your feeling that if these funds were dedicated that they would defray the expenses of construction of all roads and streets in the country—state highways, municipalities and counties?

MR. DODGE: Including aid to municipalities, as in 1947.

COMMITTEE MEMBER: I said the cost of construction—paving of all streets in municipalities, state highways and county roads—so as to relieve the local taxpayer.

MR. DODGE: No. I do not believe it will to a 100 per cent extent relieve the taxpayers of that. Many times when funds have, for example, been diverted, it sometimes became necessary for municipal and county governments to undergo or take out a bond issue for their own local problem so that it amounted to a double taxation on the person who paid the gasoline tax.

COMMITTEE MEMBER: Do you think the motorists and truckers who use the streets should pay the cost of maintenance and construction of all streets?

MR. DODGE: No.

COMMITTEE MEMBER: You think the local taxpayer should pay a portion?

MR. DODGE: Yes. He is benefiting from the fact that those truckers are bringing to him commodities that are essential to his daily life.

COMMITTEE MEMBER: Where do you draw the line?

MR. DODGE: That is difficult to say.

MR. RAFFERTY: Do you favor the tax burden for construction of main highways to come from that source?

MR. DODGE: Yes, that crystalizes it. There may come a time when we feel that road needs are adequately taken care of, but we feel that, assuming this were a constitutional provision, the proper procedure would then be a reduction in the tax itself as a gesture to the taxpayer.

The term "engineer" indicates a licensed engineer of New Jersey.

Our society is the same thing to engineers as the State Bar is to lawyers.

COMMITTEE MEMBER: I was wondering what the interest of engineers generally is.

MR. DODGE: A great many engineers are interested in it from a safety angle. There are highway engineers also. Like everybody that appears before you, we have our ax to grind. As I have set forth here, our ax is that if more money were available for highway purposes, a great many more highway engineers would be employed; but if it were just that, we would not be here today.

COMMITTEE MEMBER: Over what period of time has the \$150,000,000 of diversion accumulated?

MR. DODGE: I believe since 1932. I am almost positive. I believe that figure, \$150,000,000, is approximate.

CHAIRMAN: Mr. Smith of the League of Municipalities has suggested that his organization desires to present a brief in opposition to dedicated funds. I move such a brief be received when it is prepared.

COMMITTEE MEMBER: I second it.

CHAIRMAN: Will you see that each member gets a copy?

MR. JAMES J. SMITH: Yes.

(The session adjourned at 4:15 P.M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 8, 1947

(Morning session)

(The session began at 11:30 A.M.)

The Committee on Taxation and Finance convened at 11 A.M. in Room 201 of Rutgers University Gymnasium, New Brunswick, New Jersey.

PRESENT: Cullimore, Dwyer, W. J., Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The meeting will come to order. The Secretary will announce those present today. I believe the first person we will hear today will be Commissioner Homer Zink of the Department of Taxation and Finance.

MR. JOHN J. RAFFERTY: Mr. Chairman, before we have Mr. Zink report, in accordance with the directions of the Committee I notified Commissioner Zink, Mr. Hendrickson, and Mr. Sly of the desires of the Committee that these gentlemen appear before the Committee today and tomorrow, the 8th and 9th of July. Commissioner Zink is here and he has advised me that he is not prepared today to make a complete recommendation to the Committee but desires that he be given an opportunity at a later date, probably the early part of next week, in order to complete his presentation. I have advised Commissioner Zink that it was my view that the Committee would be glad to grant him this request. Mr. Hendrickson has advised me that he will try to be present at our hearing today, and if he is unable to be here today, he will be here tomorrow. I have had no reply from Mr. Sly at all. That is my report on the directions of the Committee as of last week. I move now that Commissioner Zink, in accordance with his request, be given an opportunity to appear again before the Committee at our meeting next Tuesday to make such further recommendations as he may desire to present to the Committee.

MR. ALLAN R. CULLIMORE: Just one matter, Mr. Chairman, and Mr. Secretary. I have had a conversation with the Chairman for permission to have Mr. J. H. Thayer Martin of Newark to come down here for a few minutes tomorrow morning, early in the morn-

ing. He will be here and there is no necessity for the Committee hearing him if it does not desire to. Mr. Martin has been quite active in this work over a period of a great many years. I was wondering if it might not be a matter of courtesy, if not a matter of enlightenment to the Committee. No objections?

MR. JOHN MILTON: I think Mr. Martin would throw considerable light on this subject.

CHAIRMAN: Mr. Martin is the one I had in mind the very first day when I recalled the gentleman from Essex County who wrote the voluminous report of a study of at least two years on basic taxation.

MR. MILTON: Commissioner Zink is here. I was wondering if he would advise us if Tuesday of next week, which will be July 15, will suit him?

MR. HOMER C. ZINK: Certainly. Actually, I could be here Thursday, but I understand you will have a full day on Thursday.

MR. RAFFERTY: Yes, Senator, Thursday we shall have a public hearing in the Gymnasium on the exemptions and dedications. I anticipate that it will be a full day because a number of veterans' organizations has evidenced a desire to be present, and those who favor dedications by constitutional provision intend to be there in force. At least that is my present information.

CHAIRMAN: I wonder if Commissioner Zink and his associates here can tell us anything at this time? I understand there is one matter he does not want to touch upon at this time, before Dr. Sly's statement. I wonder if there are any other matters?

MR. MILTON: Would you prefer to withhold them at this time, Commissioner, or are you willing to proceed? Do that which is most likely to produce a connected and complete story.

MR. ZINK: It occurred to me that it might be well for our Department to speak after Dr. Sly has spoken, and also after others who are particularly qualified to speak on matters connected with taxation. I also thought it would be wise for us to speak after we have heard others with respect to exemptions and an assessment clause. That is why I asked that we might have a later date.

MR. MILTON: Well, then, you would be in a position to assist the Committee by pointing out wherein those who have spoken perhaps have not correctly analyzed the problems, and, therefore, you would like to more or less wind up the hearing sessions of this Committee?

MR. ZINK: I would like to do that, if it is permissible.

MR. MILTON: I see no objection to that. I think it would be helpful.

MR. ZINK: It occurred to me that it might be helpful.

MR. MILTON: So that you and your staff, then, will postpone

whatever they were going to say until after the others who are to appear before this Committee have spoken?

MR. ZINK: Yes. Director Walsh is here and Supervisor Vermeulen, and they can talk today if you have any questions which you wish to ask them. I am perfectly willing to do the same. As I said before, we think it is best that we come in and summarize all our difficulties, from a practical point of view, confronted with arguments from those who will appear before you with respect to exemptions.

MR. WILLIAM J. DWYER: Commissioner Zink, we have a mass of testimony here from our previous hearings. It has not approached, even by intimation, how we are going to meet the challenge that was contained in the statement of Mr. Walsh that the State was confronted with a deficit of 50 million dollars for the current fiscal year. One thing that puzzles me, and concerns others in the Committee to whom I have spoken, is to accelerate the testimony so that we can get down to some definitive program to meet that challenge on the basis of the taxing plan that may be developed within the purview of our committee duty as a Committee on Taxation and Finance. It is a rather startling challenge to those who are thinking of the problem of taxation. We have had borderline testimony and nothing very explicit.

MR. CULLIMORE: It seems to me that what the Commissioner wants is for us to listen to the other persons who are to appear, and after he reviews their statements and digests them he would be in the strongest position possible to report to the Committee.

MR. ZINK: We feel that way.

MR. MILTON: However, there is this much to be said, Commissioner, with respect to your suggestion. Last week the League of Municipalities, through Mr. Smith and Mr. Conford, advanced a proposition to amend paragraph 12 of the appropriate Article which this Committee is working on so as to bring about an equal distribution of the burden of taxation to be borne by real estate. Getting down to cases and using plain language, that means that the League of Municipalities and Mr. Conford hope to be able to place upon the shoulders of the railroad corporations of this State what they conceive to be a share of the burden now unfairly borne by the people. I am not taking any position; I am merely stating what I understand their position to be. Having advanced the matter, they are in a sense proponents of it. Although you have been somewhat divorced from the law recently, you are familiar with the fact that one who advocates a proposition is entitled to, and it may be that Mr. Conford might want to, meet whatever you have to say. Perhaps we can extend to him, if you are going to speak on the recommendation the League made—perhaps we should extend to

him the opportunity to reply either in writing or orally, contingent upon the convenience of the Committee. Generally, I think the Commissioner's plan to be a good one.

MR. ZINK: I think your suggestion is proper, too. I think he should have an opportunity to reply.

CHAIRMAN: What you mean, then, is that Commissioner Zink wants to appear in rebuttal and Mr. Conford in sur-rebuttal.

MR. MILTON: No, it isn't rebuttal and sur-rebuttal. It is replying to the Commissioner's answers.

MR. RAFFERTY: We would then have a brief of the State League, the answer of those who desire to answer, with the opportunity of the State League to make a rebuttal.

MR. MILTON: That's right.

MR. FRANK J. MURRAY: I think the suggestion is a good one, to a certain extent. But Commissioner Zink and Mr. Vermeulen and Mr. Walsh are here and evidently prepared to talk with us, and I feel that even though they will come again we can possibly learn something today from them. If we dismiss them today we may not have anything with which to work here. I don't think it would be lost time. This is a process of getting information and getting some education, and it will develop something that possibly at a later hearing will broaden us. I feel that it would be better to hear them while we are here today and try to use the time, instead of finding ourselves without witnesses.

MR. RAFFERTY: Mr. Chairman, the purpose of my motion was to give to Commissioner Zink the opportunity to come again as requested. Commissioner Zink has advised the Secretary that whatever he may have to say today, he is not at this time prepared to make a complete statement and desires opportunity for further study of the matter. For that reason he requests the additional time, perhaps early next week. I expressly made my motion to run to Tuesday because that is the early part of next week and it is the first day we shall meet. I am sure the Committee would rather have Mr. Zink on Tuesday than any other day. I am taking Mr. Zink at his word and putting into my motion the earliest day next week that we could hear him.

MR. MILTON: I think we would rather have a connection there, Mr. Murray. We have other witnesses here, haven't we?

MR. MURRAY: I agree with the motion to have Mr. Zink come again, but I do think since they are here and evidently prepared to talk today, even though they plan to talk more completely and definitely next week, I think it would be advisable while they are here to hear them. This is a matter which is probably never complete or final until the last bell has rung, and we shall be having thoughts on this until the last minute and so will every one else who is concerned

with it. I know they do have thoughts which are further advanced than they were at the last meeting they were here. As I understand it, they have been doing a great deal of thinking since then. I don't think it would be wasted time. I think it would be helpful if we could hear from them as to what they have prepared for today.

CHAIRMAN: The motion is that Mr. Zink and his associates be heard next Tuesday. Is there any objection to that?

MR. MILTON: I second the motion.

CHAIRMAN: There being no objection, the motion is considered as carried.

The suggestion of Mr. Murray is whether we can have Homer Zink and his associates tell us anything today without infringing on that part which they particularly want to reserve for next Tuesday. There might be something that they overlooked two weeks ago when they appeared here and which they might tell us about today. There might be something which they thought about in the meantime.

MR. ZINK: I have brought with me a very brief memorandum relating to items referred to this Committee, excepting only paragraph 12 of Section VII, Article IV, which is the assessment clause involving the troublesome problem of true value. That is a subject which I would prefer not to discuss today, until I have a more definite recommendation than I have at this time. I have read over the Rules and I have noted the items referred to this Committee. I am prepared to make recommendations—my own recommendations—with respect to these items, and specific recommendations as to most of them, if you would like to hear them.

CHAIRMAN: In other words, paragraph 12 is the only one you do not want to touch on here today? Now, what do you say to paragraphs 19 and 20 of Article I, which relate more to municipal problems than they do to state problems? I feel there is a great deal in them. Does your office come in contact with that?

MR. ZINK: Yes, sir. The Division of Local Government is one of the divisions of the State Department of Taxation and Finance.

CHAIRMAN: Does Mr. Darby want to report on that?

MR. ZINK: I think that might be a good idea, although I think I know pretty much what he has in mind. I would suggest that no change be made in paragraphs 19 and 20 of Article I. Paragraph 19 is: "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." While that is an old paragraph, my feeling is that it might stand as written in the present Constitution. I feel pretty much the same with respect to paragraph 20 of Article I, which reads: "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." There are some who disagree with that because they say that that paragraph, by virtue of the opinion in the case of *Wilentz v Hendrickson*, makes it impossible for the State to adjust tax matters, as, for example, corporation tax assessments.

Paragraph 2 of Article IV, Section VI, is the one I specifically referred to two weeks ago. On that point, I wish to say I think that one should certainly stand. That paragraph is this: "No money shall be drawn from the treasury but for appropriations made by law." I believe that paragraph is a great protection to the State in many respects. I might cite cases which would cover that statement.

MR. MILTON: I would be interested in that now, if you can, unless you prefer to do it later.

MR. ZINK: Well, this is an example of the importance of that paragraph. In 1940, the Legislature passed an act authorizing the State House Commission to purchase voting machines for Hudson County, and to pay for those machines out of subventions which would ordinarily go to the county, rather than through road money or school money, including educational appropriations. Nothing was done under that act in 1940. But in 1942, the State House Commission attempted to make a contract with the Automatic Voting Machine Company to purchase machines for Hudson County. Provision was made that those machines would be paid for out of money that would ordinarily go to the county otherwise, by way of subventions. The action of the State House Commission was attacked and the matter went to the Supreme Court. It was alleged that the action of the State House Commission was unconstitutional, first, because the act of the Legislature was special legislation; second, because it delegated authority to the State House Commission which the law says the Legislature has no power to delegate; third, because the money was not appropriated for the year during which the State House Commission made the attempt to purchase; and finally, because the Legislature in effect was pledging the credit of the State.

MR. MILTON: The action of the Legislature or the Commission?

MR. ZINK: It was charged that the State House Commission was in effect pledging the credit of the State in excess of \$100,000. I happen to be familiar with it because, being a lawyer, I was asked by the State House Commission to prepare the brief. That brief was prepared and the Supreme Court thereupon decided that the action of the State House Commission was legal in all respects in that: (a) the statute in question was not special legislation; (b) the Legislature had not improperly delegated authority to the State

House Commission; and (c) the action of the Legislature and the State House Commission was not pledging the credit of the State. The Supreme Court, however, said, and correctly said, that the action of the State House Commission was improper in that no money was appropriated by the Legislature for the purchase of machines in the year during which the State House Commission attempted to act. That was specifically applicable to paragraph 2, Section VI, Article IV. I may say, in passing, that I made no serious attempt to answer that point on the brief of Hudson County because I felt there was no answer. The court decided that the action of the State House Commission was improper in that respect, and I was glad of it because I felt, as Comptroller, that if the Supreme Court had approved that appropriation of the State House Commission, a very bad precedent would have been established.

Referring to Article IV, Section VI, paragraph 3: "The credit of the state shall not be directly or indirectly loaned in any case." I think it is almost axiomatic that some such clause as that should be in the new Constitution.

I refer now to Article IV, Section VI, paragraph 4, which is a very long paragraph having to do with borrowing more than \$100,000. That paragraph was adopted at a time when railroads and canals were being developed, sometimes improvidently, and at a time when the entire annual budget of the State did not greatly exceed \$100,000. It isn't necessary, now, to go back into the history of the railroad and canals when they were being established. It is a matter of record that there was a lot of scandal and that this clause was decided as being important and necessary. I think it is still a good clause, even though the amount mentioned is only \$100,000, because it served a useful purpose through the years and it should be retained for the protection of the State and the people, in my opinion.

Referring to Article IV, Section VII, paragraph 6, with respect to the School Fund, I have no specific recommendations to make at this time, but I would like to comment briefly on this paragraph. The amount of the School Fund, at this time, is somewhere in the neighborhood of \$13,000,000 and the annual yield or income is about \$400,000—only about three per cent, which is all you can expect these days. The percentage yield is decreasing every year. About \$400,000 is admittedly a negligible sum compared with the total amount of the appropriation for the support of free schools. There are those who think that is a silly provision. Nevertheless, there seems to be widespread belief that the paragraph should be retained.

MR. DWYER: What would you do with the yield instead of applying it to the cost? Would you term it a fair investment?

MR. ZINK: Well, the suggestion has been made that the \$13,-

000,000 be recaptured or transferred from capital to, let us say, annual income, and that the \$13,000,000 be used as money, to that extent, towards the support of the schools for one year. That suggestion has been bitterly opposed by many groups for various reasons. Those who make that suggestion have in mind that the \$13,000,000 is definitely tied up, and yields only \$400,000, whereas the \$13,000,000 itself would go a long way towards supporting schools for one year. But that suggestion would be opposed by many groups for various reasons.

MR. DWYER: I would be very bitterly opposed to the subject of dissipating funds to that extent for the purpose of having a one year's spending holiday in the educational system.

MR. MURRAY: What is the amount of the state contribution to the public school fund for the current year?

MR. FRANK E. WALSH: \$14,411,000, plus over \$9,000,000 for the Teachers' Pension and Annuity Fund and possibly \$2,400,000 for the state school tax deficiency for the previous year.

CHAIRMAN: What happened to the 1837 surplus?

MR. WALSH: We still have it.

MRS. RUTH C. STREETER: Mr. Chairman, might I ask Mr. Zink for a little information about those first paragraphs 19 and 20? Under those paragraphs, how does it happen that counties, for instance, can contribute county funds to private hospitals, and municipalities can contribute municipal funds to private libraries? Is that because it is not considered a grant, but payment for services rendered?

MR. ZINK: I expect that is the theory, largely. This clause was undoubtedly written at a time when favors were shown by municipalities to railroads in order to get them to come through their towns and cities. They tried to encourage railroads to serve them, on the ground that it would be a good investment.

MRS. STREETER: I thought perhaps it was meant for profit-making.

CHAIRMAN: Before 1844 there were special private laws making grants to certain utilities or railroads of large tracts of land to encourage them, to serve them, to get them there. In answer to your hospital question, I can say, as a trustee of a hospital, that the appropriations made by the municipalities do not come through here. They pay for the free services rendered.

MRS. STREETER: No, it isn't, sir.

CHAIRMAN: They're not helping any private hospital; they're merely paying part of the free services rendered the city.

MRS. STREETER: Whether they were in payment of services rendered, in which case these paragraphs wouldn't apply, or whether they were subsidies granted?

CHAIRMAN: They're not private hospitals for the purposes of earning money.

MRS. STREETER: No, but they are private associations or corporations.

CHAIRMAN: There are hospitals that are operated for profit.

MRS. STREETER: Then it is understood that these paragraphs do not interfere with that practice, which is a common practice?

MR. RAFFERTY: Mr. Chairman, having in mind the suggestion by Mrs. Streeter, what would Commissioner Zink think of inserting after the words "to or in aid of any individual, association or corporation"—at that point insert the words "operated for profit"? Then the suggestion made by Mrs. Streeter would be protected constitutionally; that is to say, they could make a grant of money to a non-profit, charitable organization.

MRS. STREETER: That opens a very, very wide field. I think there is no doubt about it.

CHAIRMAN: Then the Jersey Central can come in. They are not operating for a profit.

MR. RAFFERTY: Of course, I really meant non-profit institution, in its legal sense.

MRS. STREETER: I was wondering a good deal about this whole feature, sir, because you all know institutions that probably are supported almost 100 per cent by private gifts and are now unable to operate without public subsidies, and that covers a great deal of ground. They are already tax exempt, and a good many persons have complained about that. How far it would be wise to go in giving them subsidies and whether we should attempt to make a limit of profit and what the system of accountability should be, I don't know. Actually, I don't know that it comes within the province of this Committee. At the present time many educational institutions are asking the Federal Government for federal funds, but there are those who say, "Oh, no, we must not be accountable for federal funds." It seems to me that if they are going to have federal funds, they should be properly accounted for. So far as I know, it is all entirely proper and is being done in the State now. I just wondered, in view of this wording, whether we could do something to make it absolutely clear.

MR. ZINK: Certainly no harm would be done by considering adding a clause to the general effect that the corporation is not to be operated for profit. We don't think it is necessary because the courts have already interpreted this clause to mean just that, so that the prohibition runs against corporations operated for a profit.

MR. DWYER: I am not to be held down to having arrived at any conclusion as to this \$13,000,000 of the State School Fund. I am very curious as to what generated the thought that that accumu-

lated fund could be dissipated in one year's spending, having in mind the philosophy that individuals have private thrift accounts in banks against the day of need and that a part of an individual's wealth is considered what money he has in the bank and what he has invested against need. Harking back to the period which we will refer to as the depression period between 1929 and officially declared off when World War II came upon us, we had individuals who were unable to pay taxes, we had communities in default, we had so much insolvency all around us, that if we didn't have some accumulation of fixed wealth segregated in some treasury in the State, the State of New Jersey would have had a different picture than its redemption from complete insolvency by a process of many new funds covering a period of ten years.

I would like to get your thinking as to how the State of New Jersey can get rid of these temporary crises in our state finances. I would like to get your philosophy.

MR. WALSH: Speaking first for the record, I'd like to say that neither Commissioner Zink nor I have suggested taking the principal of this fund. We merely have brought up the subject. However, I dispute the 13 or 14 million dollars is a thrift account because if desperate days come when the schools or the State need some of that principal, the present wording of the Constitution would prohibit its use. The only thing that the \$13,000,000 provides now is less than \$400,000 of interest a year. The fund is dedicated to provide an income for the support of the free public schools. We say it's rather ridiculous to consider that \$400,000 a year even attempts to cope with the situation of today, when the State will give to the local school districts \$14,411,000 in the next year, plus \$9,000,000 some hundred thousand dollars to the Teacher's Pension and Annuity Fund and roughly 24 or 26 million dollars for local educational purposes. In addition, the State will provide 11 million dollars more for state educational purposes, support of the State Board of Education, of teachers colleges, and the various other state activities in connection therewith, so that technically the amount of money for educational purposes in the next state budget of 155 million dollars is 36 or 37 million dollars. I can't see that the 13 or 14 million can ever come to the help of the schools or the State in times of financial crisis if the restrictive wording remains in the Constitution. I am just answering the question, not advocating the change, although I wouldn't hesitate to do so. I think it's a subject worthy of serious thought by the Committee.

MR. DWYER: Well, the old expression that it is a wise dog that knows how to bury a bone still holds good in my way of thinking.

MR. WALSH: What good is the bone if you can never dig it up?

MR. DWYER: We might consider the mechanics of it in an

emergency, but to just say it represents a possible auxiliary fund for one year's appropriation is quite a challenge to the thinking of the people who are thinking of the best interests of the State.

MR. WALSH: Well, then, you can use the expression, "Let a sleeping dog lie," but the taxpayers wake up when threatened with new taxes.

MR. DWYER: There has been a fashion of living up to the Joneses on the part of our national economy in recent years and we ought to have—

MR. WALSH: I would like to say one word on that. So far as living up with the Joneses, that was my expression at the last hearing. However, there are some things that become necessary services to the people. For example, about 30 years ago, when our appropriation for highways, roads, and port development amounted to but \$711,000, we had very few automobiles. The budget of the State of New Jersey for next year, for state road purposes, state aid for county and municipal road purposes, the support of the State Police and Motor Vehicle Departments that regulate automobiles, totals 59 million dollars, so you see that 59 million dollars is the cost upon the State Government today because of the development of the automobile. There are other services expected from the State that have developed similar growth.

MR. MILTON: Has Commissioner Zink finished whatever he cared to say today to this Committee?

MR. ZINK: Yes, I have.

CHAIRMAN: You have covered all the paragraphs, except paragraph 12 which you intend to cover next Tuesday. Is that right?

MR. ZINK: Yes.

MR. MILTON: Then is it my understanding that Commissioner Zink and his associates will appear immediately after the adjournment of the Convention next Tuesday, July 15, 1947?

MR. ZINK: Yes.

CHAIRMAN: Any further questions of Commissioner Zink? If not, thank you very much, Commissioner, for your helpful talk on those paragraphs you covered. We will be looking for you next Tuesday after the Convention adjourns.

MR. ZINK: Thank you.

CHAIRMAN: Does Mr. Walsh or Mr. Vermeulen have anything further to say to the Committee?

MR. WALSH: No.

MR. ABRAM M. VERMEULEN: No.

CHAIRMAN: Anything the Committee would like to ask of Mr. Walsh or Mr. Vermeulen?

MR. MILTON C. LIGHTNER: I would like to ask Commissioner Walsh a question, paraphrasing what Mr. Murray said awhile ago.

I think we all recognize the fact that in these days it is difficult to balance the budget and raise the funds needed to meet the expenditures of the State. But the question that this Committee is primarily concerned with is whether there is any provision in the present Constitution which makes it difficult to balance the budget? Or whether there is any suggestion that can come from those intimately connected with the financial problems of the State as to any change of the constitutional provision which would make it less difficult for those who are handling the finances of the State—both legislative and administrative—to meet these problems? We know the problems exist, but are they inherently so or is there something that can be done with the Constitution which will assist in solving those problems?

MR. WALSH: As far as the Constitution is concerned, along the line of discussion, two weeks ago Utopia was recommended by one of those appearing at the meeting. That would be ideal and grand for the fiscal officers. They wouldn't have any worries. They would know that they had full protection all the way around. But presently I would say that there are no complications, because legislatively we have a sound fiscal administrative structure available for state operation. The only thing that the Constitution could do to improve the situation would be to insure that it would stay that way and not be subject to the whims of a capricious Legislature, which we rarely have in New Jersey.

MR. LIGHTNER: Would that be accomplished by adding to the Constitution the budgetary provision that was in the 1944 constitutional proposal? Or is there any alteration of that?

MR. WALSH: So far as I'm concerned, I'd say that in the interest of expediency, if you're not going to get into difficulty with the special groups and pressure groups so that you would have difficulty passing an improved Constitution at the next election, leave the fiscal provisions alone. That is my best judgment.

MR. MURRAY: Are there any recommendations by the fiscal officers as to any change in any of the provisions of the Constitution which have been referred by the Convention to this Committee?

MR. WALSH: Not to my knowledge.

MR. MURRAY: Do I understand, then, that the fiscal officers feel that those particular provisions of the Constitution which have been referred to this Committee should stand as they are?

MR. WALSH: So far as I'm concerned, for the reasons I expressed before, I think that the State could get along very nicely as is.

CHAIRMAN: In other words, you think the present constitutional provisions, with the decisions of the courts thereon, have been so interpreted that the Legislature could do anything that the fiscal

officers would like to do to have a balanced budget? In other words, keep the present Constitution?

MR. WALSH: Yes, sir, as proven by what the Legislature has already done in the last few years.

MR. LIGHTNER: Is the statement which you just made so broad that it is fair to assume that you would be opposed to the suggestion made at the last meeting of this Committee for the uniform bearing of the tax burden by all real estate?

MR. WALSH: I don't quite get that question. May I have it again?

MR. DWYER: Mr. Walsh wasn't present at the last meeting.

MR. WALSH: I wasn't at the last meeting. I was here two weeks ago.

MR. LIGHTNER: Are you familiar with the proposal that was brought forward at our last meeting by the League of Municipalities?

MR. WALSH: I read something, but I am not too clear in my mind as to what I saw in the papers. In fact, I don't know how accurately the testimony was reported. Whether there should be uniformity of property—

MR. LIGHTNER: I would interpret the statement that you just made to us to be sufficiently broad so that you would be in definite opposition to their proposal. I certainly wouldn't want a transcription of the record on that unless you are in opposition.

MR. WALSH: I would rather not be forced to go on record without reviewing what was said.

MR. MURRAY: I understand that is the provision on which Commissioner Zink does not want to touch until next Tuesday.

MR. ZINK: That's right.

CHAIRMAN: Any further questions? If there are no further questions, I want to thank you, Mr. Walsh, for your statements today.

MR. RAFFERTY: I have made an effort to contact Dr. Sly, but I have not been able to reach him as yet. I understand that he planned to come tomorrow, inasmuch as I asked him to be here both days. I will be glad to contact Senator Hendrickson and ask him what time he can be here. He is at another committee meeting. That was all that was on the agenda for today and tomorrow.

CHAIRMAN: If Senator Hendrickson is here we might hear him this afternoon.

MR. RAFFERTY: I will try to locate Senator Hendrickson and see if he can come in here before noon, or rather shortly after, or whether he can be here this afternoon.

MR. MILTON: May I suggest that if you can locate Senator Hendrickson and if there be no further witnesses, that we might

hear him before we adjourn for lunch so that we can return to our normal pursuits?

MR. RAFFERTY: While we are trying to locate Senator Hendrickson, there is a matter which I should have brought to the attention of the Committee earlier. It has really nothing to do with our deliberations except insofar as it concerns services to the public generally. Mr. Marshall G. Rothen, of the Rutgers Forum Association, the group that has public conferences weekly over the radio, is here. Mr. Rothen would like to know whether any members of this Committee would like at an early date to participate in one of the radio round-table discussions. Mr. Chairman, I respectfully request that Mr. Rothen be given an opportunity to address the Committee on that point at this time.

CHAIRMAN: There being no objection, we will hear Mr. Rothen at this time.

(At this point Mr. Marshall G. Rothen invited members of the Committee to appear on the Rutgers Forum on Tuesday, August 5, 1947, to have a round-table discussion regarding the Committee on Taxation and Finance.)

MR. MILTON: I suggest that we take the matter under consideration and advise Mr. Rothen as soon as possible.

CHAIRMAN: Very well. The matter will be taken under consideration and will be discussed by the Committee, and at an early date you will be advised which members of the Committee desire to participate on your program.

MR. RAFFERTY: Mr. Chairman, with the consent of the Committee and while we are waiting for Senator Hendrickson, I would like to present Mr. J. Kingsley Powell, of Metuchen, who has offices, I think, in Newark and other cities, and who has had many years of experience in the courts with respect to taxation problems as affecting real estate. He desires to make a preliminary informal statement to the Committee. Mr. Chairman, with the consent of the Committee, I would like to present Mr. Powell to say what he desires to say to the Committee.

CHAIRMAN: Is there any objection to hearing Mr. Powell? If not, we will hear him at this time.

MR. JOHN KINGSLEY POWELL: Gentlemen and lady of the Committee:

I had no idea of barging in this way before the Committee was in session. I came primarily to see when you were going to meet and if it might be possible sometime for me to sit down and discuss some of these real estate taxation problems with you which I feel perhaps qualified to do.

My name is Powell—John Kingsley Powell. I live in Metuchen, New Jersey. My real estate offices are located in New Brunswick

Newark, and New York City. I've had 30 to 35 years' experience in real estate and construction. Mr. Milton may remember me when I was real estate conservator for Commissioner Carl Withers of the Department of Banking and Insurance during the hectic days when we were liquidating building and loans, and banks, and mortgage companies. I am appearing as an individual. I am a past president of the New Jersey Association of Real Estate Boards. I have just served four years in the Army. I was chief in charge of real estate disposal in New York, New Jersey and Delaware. I simply mention those because I think I am qualified. I have done considerable appraisal work. That is my business as a real estate consultant today, particularly in testifying before federal, state, and county courts on valuations of real estate. Recently, during the past six months, I have made surveys for various cities throughout the East about their assessment problems. I have just completed surveys for the cities of Wilmington, Delaware, and Beacon, New York; and I have just completed one recently here in Middlesex County for the City of New Brunswick and the Borough of Highland Park in their appeal before the county and state tax boards on matters of assessment review as it applied to the methods of assessment in various municipalities in Middlesex County.

It is a most important subject, as you all know. We in the practical field know perhaps more in detail the methods being pursued by municipalities and county and state appeals on the existing laws. As I understand it, part of your problem is to canvass and analyze and turn the searchlight on the existing laws and what might be done, if anything, to remedy the situation in your new Constitution. As I say, I am not prepared today, and, therefore, would crave an opportunity as an individual, if you see fit, to appear before you.

MR. CULLIMORE: Just a word I would like to say, Mr. Chairman. I think that if we had the understanding that we were not discussing the merits of the question, but the merits of applying this to constitutional provisions, we would be on clear ground. It seems to me that many of our witnesses have wanted to discuss the merits of this, that, or the other proposition. Whereas we are concerned only with the merits of inserting a clause in the Constitution to cure that particular situation.

MR. MILTON: Mr. Chairman, what time would you suggest, then, that we hear Mr. Powell?

CHAIRMAN: Thursday, at 2 o'clock.

MR. POWELL: Thank you very much.

CHAIRMAN: The Committee stands adjourned for an executive session.

(The session adjourned at 12:30 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 8, 1947

(Afternoon session)

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

The Committee on Taxation and Finance reconvened in Room 201 of Rutgers University Gymnasium, New Brunswick, New Jersey.

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter and Struble.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: At this time I would like to call Mr. Robert C. Hendrickson, State Treasurer.

MR. ROBERT C. HENDRICKSON: Mr. Chairman and members of the Committee:

I would prefer very much to go into questions and answers, but I don't think that before a Committee like this, it is perhaps an orderly way to proceed. I have laid out on paper my basic thinking on the tax laws and I assume that is what you are primarily interested in. After I get through with that basic thinking in a more or less thorough fashion, I will be glad to submit to questioning.

Since the day that man first conceived of government, taxes and their attendant problems have grown to such proportions that today we look upon them as perhaps the most controversial of all the issues which go with a modern civilization. Thus it is of extreme importance that this Convention should so treat with this phase of its work that the Legislatures of the future will have freedom of movement to meet squarely all the major needs of the people with a minimum of limitations.

In a memorandum to the Joint Legislative Committee, appointed to conduct public hearings on the proposed revision of 1942, I said:

"To my best recollection, the Commission on Constitutional Revision, after long and serious deliberation upon various and sundry tax provisions which might be written into a constitution, concluded that the less said about taxes in any constitution, the better. In fact, I oftentimes feel that the whole subject should be left open to the Legislature so that New Jersey will be in a position to meet the post-war era and the difficult new order which is ahead without jeopardy to the more essential processes of free government."

It was because we clearly recognize the principle that the power of taxation is an essential, inherent attribute of sovereignty, that the

1941 Commission at one point, as in the 1844 Convention, questioned the need of any tax clause at all. We did, however, finally recommend no change in the tax clause at all, other than that it be moved from Legislative, Article IV, to a new Article VII, Finance.

To review briefly the conclusions of the Revision Commission of 1941 on the subject of taxes and taxation—or I should use the broader term, fiscal matters—we recommended, under Article VII of our proposed draft, the following:

1. All dedicated funds should be abolished.
2. All appropriations for support of the State Government to be made in a single appropriation bill.
3. No supplementary appropriations to be made unless restricted to a single object or purpose and approved by a two-thirds vote of the membership of each house of the Legislature.
4. State borrowing under our proposals would have been limited to serial bonds which would call for an annual reduction in the principal of the loan.
5. The State should be free to repay its debts out of any revenue it might have available, but whenever debt charges fall due, the State Treasurer would be compelled to set apart a sufficient sum from the first revenue he received.
6. Property shall be assessed for taxes under general laws and by uniform rules, according to its true value.

In respect to dedicated funds, we feel very strongly that so long as “the State’s left hand was not permitted to know what its right hand was doing in a fiscal sense,” our financial management would always be under a severe handicap. Thus, the effort to abolish so-called dedicated funds was aimed at disbursing separate little treasuries for favored projects, and providing a remedy to the “hide-and-seek” policies in our fiscal operations.

In the course of our deliberation we were, of course, confronted with the problems of tax exemptions and tax limitations, but except for the limitations on appropriations of public moneys which appear in our present Constitution, we made no specific recommendations. Personally, I felt then as I feel now—that these are matters for legislative action, for under our cases, in the absence of specific constitutional inhibition, the Legislature, in the exercise of the sovereign power of taxation, is free to select subjects of taxation. Even under the present Constitution, class taxation is valid so long as there is compliance with the classification rule that all reasonably within the class are included and uniformity prevails throughout the whole class. There are many cases on this subject.

That, under our present Constitution, we are “winking” at certain exemptions there can be no question. Thus, if in the best judg-

ment of the Convention, a uniform exemption should be allowed for veterans within reasonable limitations, I would have no quarrel. But mind you, it will be most difficult to prefer class over class, and unless the limits are specified, it may be most expensive over the years.

I have already referred to the matter of dedicated funds, but by way of review I would point out that this subject deals primarily with the revenue side of government. While appropriations which would have also been regulated by new provisions in the 1941 constitutional proposal deal with public expenditures, in order to compel careful planning in this vital matter we of the Revision Commission felt that the Legislature should be required to gather together all appropriations in one single budget or appropriation bill, so that the cost of all phases of State Government would be apparent to the public.

We recognized, of course, that there would be emergencies and unforeseeable contingencies in certain fiscal years. These possibilities we dealt with by allowing for supplemental appropriations, but only upon two-thirds vote of each house. The bill, in any instance, carrying a supplemental appropriation would direct its attention to any given item for some single object or purpose, and this seemed to us to provide a fair medium against "log-rolling" to raise the necessary votes. Again, we did not overlook the fact that funds should be available in any case, for we had all seen too much of appropriations without regard to the source from which the funds were to be derived. On the whole, we felt that the provisions I have just mentioned would ultimately lead to greater economy as well as to a higher degree of efficiency.

As to the matter of public debt, the history of New Jersey has proved the wisdom of rigid restrictions on state borrowing. I do not hold, necessarily, that we need to keep that limitation within the \$100,000 now specified in the present Constitution, but I do urge the requirements of the referendum upon all indebtedness above a fixed or certain sum. I leave the question of amount with the good judgment of the members of this Committee.

In our report to the Legislature in 1942, the Commission on Revision, in dealing with our debt structure, recommended only serial bonds, which would call for amortization of our debt each year. We purposely eliminated sinking funds bonds and, looking back over the years, I am now convinced that this was an error on our part, for our sinking funds have not only met all their requirements, but have also served to stabilize the credit of the State as well as its municipalities, particularly in those years when, but for the sinking fund, we would have had to impose new taxation or else meet with widespread municipal bankruptcy. In order to protect and elevate

the State's credit position, we deleted the provisions that the law which authorized any given issue of bonds must pledge the source of payment, and substituted a provision requiring the State Treasurer to pay the annual public debt charges out of the first money he receives.

I have tried to indicate that the tax and finance section of any constitution, like a constitution itself, should be simple and to the point. It should not attempt to legislate. If we seek to impose all sorts of restrictive provisions on our Legislatures, we will one day soon find them utterly lacking the power to deal effectively and courageously with some of the pressing problems which lie ahead. We should remember that most of the restrictive provisions which have harrassed legislatures in our sister states, were those imposed under the reconstruction period following the Civil War. We must learn to recognize our legislators as men of integrity, even though we know that some Legislature will always have its quota of misfits. On the whole, our Legislatures down through history have been regularly composed of considerable numbers of men who have unselfishly served their State capably and well, and this Convention should continue its deliberations upon that assumption and premise.

Therefore, I say again, let the tax clause state its purposes and objectives in broad and understandable terms, and I am sure that each succeeding Legislature will justify the expression of confidence written therein and fully meet its trust to the people, according thereto.

Formally, that's all I have to say, but I do want to say very positively that the present tax clause is, in my judgment, quite adequate. I do feel that the tax clause proposed by the 1941-1942 Revision Commission was a slight improvement, and I think the one proposed by the Legislature in 1944 was an even greater improvement, except, you remember, they wrote in the veterans' exemption. Of course, that is a special act. You have got to deal with that exemption provision, since the exemption problem today takes in about 560,000 veterans. As you know, by a court ruling the exemptions at the present time are clearly unconstitutional, but, of course, it has worked out all right because of the fine attitude of the people in general. You must consider, however, that you have that to think about. You have cause to think of certain groups and classes in this connection.

CHAIRMAN: Thank you very much, Mr. Hendrickson.

MR. MILTON C. LIGHTNER: I would like very much to get an elaboration of that report you made with respect to the tax clause as contained in the 1944 proposal. I think you said that in your opinion it was a substantial improvement over the present Constitution.

MR. HENDRICKSON: Yes. The 1944 proposal read:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to standards of value as may be provided by law but not in excess of true value."

MR. LIGHTNER: In the testimony before this Committee references have been made to the great mass of litigation which has been built up in this State defining by judicial decision what is meant by the present tax clause. I am wondering whether this provision proposed in 1944 was intended to alter the rule of law as it had been established by courts, or was intended to clarify it. Was it intended to impose some rule which would be different from the judicial interpretation of the existing Constitution?

MR. HENDRICKSON: I think, Mr. Lightner, it was intended purely as a matter of clarification.

MR. LIGHTNER: Not to change it?

MR. HENDRICKSON: No, sir.

CHAIRMAN: It was the 1844 proposal plus the decisions, and then it was a definition of all that combination?

MR. HENDRICKSON: Yes.

CHAIRMAN: They didn't mean to make any changes but to clarify it?

MR. HENDRICKSON: Not in my opinion. I think I might have been misleading when I said that the 1941-1942 proposed Constitution was an improvement. It wasn't an improvement because it was the same clause, except it was recommended that it be placed in the forward part of the Constitution.

MRS. RUTH C. STREETER: Mr. Hendrickson, it has been rather generally testified before, that under the present tax clause, although it says that assessments shall be at true value, they vary greatly between municipalities in the same county. Is that bad? Does that create an injustice?

MR. HENDRICKSON: I don't think that is the fault of the Constitution. I think that is the fault of the way the law is administered, and the fault of the law.

MRS. STREETER: Does that work an injustice on anyone?

MR. HENDRICKSON: Yes, of course it does. It is bound to. I remember I was inheritance tax supervisor in my own county for some years before I came to the Senate. One of the things it was necessary for me to do was to appraise all the real property of decedents' estates. I was amazed to go into one municipality and see a property of a certain type and character assessed properly, and then go into another municipality and see exactly the same type and character of property which would be way down below the assessment of the other property.

MRS. STREETER: Doesn't one injustice occur when refunds are

made of state-collected taxes on the basis of assessed valuations of the county?

MR. HENDRICKSON: That varies.

MRS. STREETER: Is that one place where an injustice might occur?

MR. HENDRICKSON: Yes, it would under some conditions.

MRS. STREETER: What I am driving at is to see if we should try to correct this existing situation.

MR. HENDRICKSON: I don't want to seem radical and I don't want to throw confusion into what I think will be a very successful Convention. I have always felt that we needed to tackle this business of assessments on a county level rather than on a municipal level. That can be done by legislation. I have always felt that could be done. I may be wrong. I have argued the point with many tax assessors. I do think it is a matter for legislative treatment.

MRS. STREETER: There is nothing this Committee could do about it?

MR. HENDRICKSON: Unless you want to provide directions without being too specific about it. You could write broad, general terms.

CHAIRMAN: Under the law creating this Convention, we may recommend to the people that certain legislation be adopted and state why we did or didn't do certain things. In other words, it is legislative rather than constitutional.

MR. LIGHTNER: One thing that troubles me in this: I may say that I think that the true value clause in our present Constitution is one which is hard to understand unless you happen to be a lawyer and thoroughly familiar with all the decisions of the courts. This 1944 proposal injects the words "according to standards of value as may be provided for by law." Is it your concept under that provision that it would be the duty of the Legislature to establish a standard of value which would govern the local real estate assessments? Or what would be the governmental body which would establish the standards of value affecting it?

MR. HENDRICKSON: That would depend on legislative direction. The Legislature would direct that standards of value be fixed. That standard might be fixed in the legislation, as, for example, the state tax laws. Whoever arrived at the final rate would have to follow those standards as laid down.

MR. FRANK J. MURRAY: They would be fixed by the Legislature?

MR. HENDRICKSON: That's right. They would have to follow the classification rules, too.

MR. SIGURD A. EMERSON: Isn't that wording in the 1944 proposal an invitation to assess an amount less than true value?

MR. HENDRICKSON: That is what we do now. We don't assess at true value now.

MR. EMERSON: You attempt to?

MR. HENDRICKSON: It is a very poor attempt.

MR. WILLIAM J. DWYER: Senator, I was very interested in your analogy within the scope of your experience, where you encountered property in one township assessed at a stated value and a definite variation in the next township. In Woodbury, for instance, your home town, and Glassboro—one property in Glassboro assessed at \$15,000 and the one in Woodbury at \$10,000. Do you think that works an injustice on anybody?

MR. HENDRICKSON: Yes, I do.

MR. DWYER: Well, the assessor has the problem of local government—

MR. HENDRICKSON: I can conceive of cases where on the basis of the local tax rate it might not work an injustice.

MR. DWYER: That is the point I want to make. The problem of the municipality, reducing it to home rule terminology, is to balance its own budget by a tax levy, for the purpose of supplying necessary local services and necessary contributions to the county. If they strike off a rate that is fair to the people in Woodbury, and one that is fair to the taxpayers in Glassboro, and thus balance their budgets, who is injured in the process?

MR. MURRAY: All the people of the county are injured.

CHAIRMAN: And all the people of the State are injured if you have a state tax.

MR. DWYER: You have conditions such as I have laid down in some of our South Jersey communities, where the tax against real property gives the fellow who is fortunate enough to live in those communities a "squatter's right" as opposed to the fellow who lives in the high-value, metropolitan area of the State. I have been through the mill insofar as municipal financing is concerned, and I have seen great variations in assessments, as a result of which some have escaped their responsibility.

MR. HENDRICKSON: I recognize, gentlemen, that you have a great difficulty there, but I don't think you can correct that rule by a constitutional change. I think that is a matter for the Legislature, based on a tax clause that you write right here.

CHAIRMAN: In other words, the Constitution must be general in words and there must be legislation for that purpose, and the problems will be for legislative action.

MR. ALLAN R. CULLIMORE: Gentlemen, the thing that bothers me and perhaps some of you, is the same thing that Mr. Lightner brought up. The Constitution of 1776 didn't have any tax clause; then followed a Constitution which did have a tax clause.

Through the years that intervened there came into being many statutes, misinterpreted by many courts. Those statutes, as I see it now from the testimony we have had, developed a pattern which now works in a pretty satisfactory way. The only question that bothers me is, might we not develop again many statutes and many interpretations?

MR. HENDRICKSON: In my formal remarks I said our Commission in 1941 came very near to not writing any tax clause, for the particular reason that sometimes you have language intended to mean one thing and 20 years later some distinguished jurist would render a decision that would create a mass of new litigation and the need for new legislation.

CHAIRMAN: It is your opinion that the present tax clause, plus the decisions thereon, is pretty well defined right now, and laws passed thereon are pretty well known?

MR. HENDRICKSON: If I were a member of this Committee, I would hold pretty fast to that clause.

MR. LIGHTNER: Even though, coupled with that, you made the statement that you considered this would be an improvement.

MR. HENDRICKSON: Yes, that is my feeling. It clarifies the situation to me.

CHAIRMAN: It does to me. You understand it to be what we are now doing?

MR. HENDRICKSON: Yes.

MR. MURRAY: What bothers me is that it says "not in excess of true value." Now, we must assess according to true value, and decisions have interpreted the words "according to" to mean "at."

MR. HENDRICKSON: Decisions have evaded that—a lot of them.

MR. MURRAY: I think the general consensus among the legal authorities is that "according to" means "at."

MR. HENDRICKSON: They have been a little scared of that which we call true value.

MR. LIGHTNER: Isn't it true that we have statutes in this State now that provide for assessment of property, and certain classes of property are assessed at less than true value?

MR. HENDRICKSON: I don't think there is any doubt about that.

MR. JOHN J. RAFFERTY: I wonder if Mr. Lightner isn't thinking of rate rather than assessment? There is a statute which says assessments may be at an arbitrary rate, which is different from the rate on true value on other classes of property. Perhaps that is what you mean. The assessments, as I understand it, must be at true value, but the Legislature has in a given class set an arbitrary rate

which is different than the rate on other classes of property. Is that what you had in mind?

MR. LIGHTNER: Perhaps that is the legislation referred to by some of the other witnesses.

MR. RAFFERTY: I think so. My remarks, Mr. Lightner, you understand, are only in an endeavor to help. Does that express ultimately what you had in mind?

MR. MURRAY: That appears in Dr. Sly's committee report of 1947—tangible personal property, *i.e.*, certain types of it, such as machinery and equipment, shall be assessed at one-half the tax rate on true value.

MR. LIGHTNER: Is there any practical difference between saying that personal property should be taxed at one-half of the rate applied to other property, assessments all being at true value, and a rule that such property shall be assessed at 50 per cent of its true value and pay the same rate as other ratables?

MR. RAFFERTY: Rather than have us committee members get into a debate on it, perhaps Senator Hendrickson here can answer that.

MR. HENDRICKSON: The present tax clause actually means that the property shall be assessed according to true value. What actually happens is that the assessment is based on true value. Not "according to" true value. There is evasion there, of course, but that isn't the fault of the tax clause. Maybe you can clarify it. I can't see any language, except that which appears in the 1944 proposal, which clarifies it for me in any better shape than the present clause.

MR. MURRAY: That is an abandonment of the true value provision. It permits the Legislature to provide for the assessment of property at one-half of true value.

MR. HENDRICKSON: What is intended, I am sure, is that new property wasn't being assessed uniformly in the State according to true value. So the Sly Committee sought to give the Legislature the right to lay down the laws which would permit the assessment and collection of taxes on a basis of true value.

MR. EMERSON: Could you ever accomplish that when dealing with individuals?

MR. HENDRICKSON: No, because we are human and the Legislature is a cross-section of the people. So we will always be.

MR. DWYER: You can't get relativity on rates of assessments when you are dealing with a multiplicity of assessors. Every municipality has a different assessor, who has a different motive or a different concept of his prerogative as the taxing agent of the community. He strikes off a rate that varies in every county. You get that variation all the time.

MR. HENDRICKSON: You get a different class of service, too.

MR. RAFFERTY: We have discussed that point several times, but we have Senator Hendrickson here and we have his view on it. He says, of course, that there is an injustice when you have a true value assessment in town A and a lesser true value assessment in town B. There is still a situation like that, and I, John Jones, a taxpayer, am harmed by it. Do I not have a remedy by way of appeal on the ground that the assessment on town A property works an injustice on me? Isn't there a remedy to that situation? It does work an injustice on me because I must contribute a greater portion of state taxes than I otherwise would contribute.

MR. EMERSON: The tax people said the only relief is to get the other fellow's valuation raised.

MR. RAFFERTY: That is the remedy, of course, but isn't that remedy available?

MR. HENDRICKSON: It is theoretically available, yes.

MR. RAFFERTY: We have the situation in Middlesex County presented here. Mr. Waesche, of the State Board of Tax Appeals, told us here that the several citizens in Middlesex County complained of the inequitable assessments from municipality to municipality, and they went before the State Board of Tax Appeals. So it seems there must be some remedy available in such cases.

MR. LIGHTNER: Don't they hold that if the complaining taxpayer is assessed at not more than the true value of his property, he has no direct relief?

MR. RAFFERTY: I am not proposing to give the answer. I don't think at the moment we ought to find it. I thought perhaps Senator Hendrickson might have, offhandedly of course, some view as to that proposed, as to the inequity of the tax assessments of the several assessors.

MR. HENDRICKSON: That, Judge, I think, is a matter for the Legislature to deal with. We must depend on the Legislature to deal with these matters. If the appeal units of the county tax boards or state tax boards aren't doing their job, there is something wrong. Either they are lax or the legislation is lax. It doesn't take long to determine what is wrong. I think the State should provide the machinery to deal with such problems.

MR. EMERSON: Senator, there are provisions now that will permit equalization of the tax bills. The machinery is all set up.

MR. HENDRICKSON: It is set up but it doesn't work too well. I can't understand why. Maybe the Legislature ought to put a mandate in the law in that respect. Then, perhaps, if they believe a job ought to be done, they can put better men in there.

MR. LIGHTNER: We have the language proposed in 1944 containing a specific reference to standards of value to be provided by law. Might that not be spur to the change in legislative action to

fix a standard and provide some solution for it?

MR. HENDRICKSON: Well, I agree with that section—with that clause. It allows that sort of legislation.

MRS. STREETER: Was it intended to permit taxation according to *use* rather than *ad valorem*?

MR. HENDRICKSON: No.

MR. CLYDE W. STRUBLE: Senator, the State Board of Taxation has the legislative authority at the present time to come into a given town or municipality for the purpose of equal taxation?

MR. HENDRICKSON: That's right.

MR. STRUBLE: And the county board has it too?

MR. HENDRICKSON: Yes, but it is hard to get them to do that.

MR. STRUBLE: But after all, this so-called true value is really fixed by the local assessor, isn't it?

MR. HENDRICKSON: That is the theory.

MR. STRUBLE: Just so long as we have 565 municipalities and 565 different men doing assessing we are always going to have this discrepancy of one town against another, as a result of which one town thinks taxes are too high. We will continually have that, won't we?

MR. HENDRICKSON: A certain amount. You needn't think that at this Convention, or at any convention, that you can ever perfect the method of fixing valuation. You can only do the best you can. I have the highest hopes for this Convention. I think the attitude and spirit has been splendid. If we can keep it always at the highest level you will come out of it feeling justly proud that you were a delegate.

CHAIRMAN: Any further questions of Mr. Hendrickson? . . . Very well, then. I want to express the appreciation of the Committee to Senator Hendrickson for coming here and giving his very helpful views on our tax clause.

MR. RAFFERTY: Mr. Chairman, that concludes the agenda for today, unless there is some person present who has some remark or address?

MR. DWYER: I make a motion that we adjourn.

MR. JOHN MILTON: I second the motion.

CHAIRMAN: I declare this meeting adjourned until tomorrow morning, Tuesday, July 9, 1947, at 10:30 A. M.

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

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Wednesday, July 9, 1947

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

The fifth meeting of the Committee on Taxation and Finance was held in Room 201 of the Rutgers University Gymnasium, New Brunswick, New Jersey.

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read and Streeter.

Chairman William T. Read, presided.

CHAIRMAN WILLIAM T. READ: The meeting will come to order. The Secretary will please note those present.

MR. JOHN J. RAFFERTY: Mr. Chairman, I wish to announce that before each member this morning is a copy of the minutes to date, together with a brief of the New Jersey Farm Bureau with respect to dedicated funds.¹ The papers are being distributed in this way instead of mailing them to you.

CHAIRMAN: Are there any further preliminary remarks? If not, I wish to announce that we are very happy in having with us this morning, through the instrumentality of Mr. Cullimore, the services of Judge J. H. Thayer Martin who was Tax Commissioner many years ago. We will be glad to get the benefit of his thoughts on the subject over which this Committee has jurisdiction.

MR. J. H. THAYER MARTIN: I have no prepared statement to make to you today. Dean Cullimore called me on the phone yesterday morning, and I didn't know until he brought me down this morning just what features were of particular interest. I will be able just to give a sort of answer to the points that Dean Cullimore raised on our trip down here.

MR. JOHN MILTON: May I interrupt you? I think you would be more comfortable if you slipped that microphone device on the lapel of your coat.

MR. ALLAN R. CULLIMORE: It might be helpful if I mentioned the subject of our conversation. I pointed out to Mr. Martin the three things in which we are deeply interested and which I felt he very definitely could help us on. One is the proposal for keeping the wording of the only clause in the Constitution in which we are

¹ The brief appears in the *Brief of New Jersey Highway Users' Conference* which appears in the Appendix to these Committee Proceedings.

interested as it is. The second thing was to put that provision in the form of the proposed paragraph which was in the 1944 constitution proposal. The third thing was the proposal made by the League of Municipalities. They had a very definite proposal in connection with the wording of that clause. It seems to me that Mr. Martin might give us his opinion on that. It was very helpful to me and I hope it might be helpful to you, too.

MR. MARTIN: I personally am very strongly of the opinion that you can't improve on the language of the present Constitution with respect to taxation. I was very much opposed to the proposal that was last submitted for the so-called basis of valuation. I forget the language of the proposal. There are only a very few states that have such a provision, and while I was Tax Commissioner I made a considerable study of the conditions in those states and I found that the result was even worse than in New Jersey—and everyone knows there has never been any uniformity in New Jersey.

In principle, I don't think the language in our present Constitution can be improved. Some of the people who urged the change that was proposed last time felt or said it was essential to have such a change—not to authorize assessment of 10 or 50 or 70 per cent of true value, but to establish standards, as the Legislature did in the case of the utilities tax. But the decision of the Court of Errors and Appeals has shown plainly enough that under our present Constitution no change is necessary to make that a permissible method.

My observation not only in respect to New Jersey taxes but in the study of the practical operation of tax laws in other states and in conferences with the heads of the tax departments of other states, has convinced me that the Legislature should be left very largely free to change the tax system from time to time, as conditions at that time seem to warrant and justify such change.

I noticed by the paper that there has been some urge to put in a provision about income taxes. I don't think any qualified lawyer has the slightest doubt that the State under its present text could levy an income tax on a fixed rate. The Legislature probably could not, under our present Constitution, levy an income tax on a progressive rate, and personally I don't think the progressive rate is sound. I may be old fashioned, but I think our experience with the federal income tax indicates that the State is very much better off with levies in income tax at the same rate on all things taxable, as Massachusetts does. Massachusetts, like New Jersey, is a conservative state and is a strong believer in fairness and justice, and it certainly is not fair to tax one man at a higher rate because he is wealthier than someone else.

Dean Cullimore mentioned the proposal of the League of Municipalities which was just submitted to require a tax proposal—I

understand it was submitted on behalf of the League by Mr. Conford, who is a very capable pleader and has devoted a great deal of time trying to get the railroads to pay more taxes—and it is intended to knock out the present Railroad Tax Act which fixes a rate on railroad property somewhat substantially less than the general rate on most real estate. The reason for the reduction in the railroad tax, the present railroad tax—the drawing of which I had nothing to do with—was to impose a tax both on the property, the tangible property of the railroads, and upon their income. And it provides in effect that after paying a flat tax of three per cent on the tangible property of the railroad, the railroads shall also pay a tax on the net income allocated to New Jersey on the basis of the percentage in this State of its total miles of track, for the previous year, which could equal or exceed such allocated earnings. A proposal to put the same rate of tax on railroad property as may be levied upon other real property would not produce equality at all unless there were an income tax on the owner of the other real property that was equivalent to the railroad income tax. The franchise tax is an income tax, of course.

The difficulty with taxation of property, of course, lies in the fact that property is never assessed on the same basis all over the State. Justice would require the basis of assessment to be uniform. You can't produce uniformity by constitutions or by law. The nearest approach to uniformity in valuation could be had by having a single assessor for the whole State. Political reasons have never made that possible, and I don't suppose it will become possible for years. If there was a single assessor and he did not produce uniformity he would be responsible and you could pin it on one man. Next to that would be a single assessor for each county, with state supervision. A state supervising authority could bring about some uniformity if he had only 21 assessors to deal with. At the present time no state authority could produce any uniformity with over 500 different assessing units. During my term as Tax Commissioner there was almost no effort made by the Legislature to produce uniformity, for the reason that the Legislature felt that economy necessitated eliminating substantially the previous appropriation made for that purpose. There are lots of laws on the books that try to bring about uniformity of assessment.

The cost to the government would be very much less if we had only 21 assessors in the State. Until you can produce real uniformity in assessment you can't have uniformity in the tax burden, no matter how you write it in the Constitution. I believe that it is safer to trust the Legislature to change the tax law from time to time to come as near to fairness in the tax burden as is feasible. The people can count on it that the Legislature will never for very long show

any favoritism toward any large aggregation, because they don't have the votes to elect the Legislature. The Legislature is much more responsible to public sentiment than any constitutional provision can be. My observation has been that the corporate interests always pay more in gross, having a heavier tax rate than private interests who own the same amount of property.

At one time while I was Tax Commissioner, at the suggestion of the man who was head of the Local Property Tax Division of the Department, I sent out a letter to all the assessors calling their attention to the statutory and constitutional requirement that all property not exempt is taxable and that they almost uniformly failed to levy any tax whatever on intangible property. That letter caused so much consternation that the then Governor called me into his office and objected very seriously. I said the law requires me to do that. He said, nevertheless it should not be done.

In considering questions of taxation you have to recognize the fact that public sentiment is very touchy, and the Legislature is much more responsible to public sentiment than any constitutional provision can be.

I think the present provision in the Constitution is better than any improvement that has been suggested so far. You are, of course, aware that if you do propose any change whatever in the present language, it is likely to be 25 years before the taxpayers and the government and the Legislature will really know what the new provision means. It took a great many years of litigation before it was definitely settled what the Legislature could do under the present language. It certainly would take many more years to find out what any new language meant or what the court will say it means.

I don't know whether I have covered adequately the points that Dean Cullimore suggested to me on the way down.

MR. CULLIMORE: I want to express my appreciation because, as I say, I had a chance to discuss these points with the Commissioner, and it was only to straighten my own thinking a little. I think he is so well versed that I felt his point of view might be stimulating to the Committee.

CHAIRMAN: I want to join in thanking Mr. Martin for coming here. I just thought I'd ask this question: Some years ago you made a report or a suggestion for the broadening of the tax base because more revenue was needed to run the State and cover the expenses thereof. Do you think, or is it your opinion, that the present tax clause, paragraph 12, that we speak of, is broad enough to contain everything needed?

MR. MARTIN: I haven't the slightest doubt about it. The Legislature, I am very sure, under this clause could provide for an income tax. The Legislature did provide for a sales tax which

didn't reach the test in the courts because it was repealed too soon. But the briefs filed in the attack on that sales tax were very weak, and I haven't the slightest doubt that if it had been carried to conclusion the courts would have sustained it. The courts have already affirmed various types of franchise taxes and business taxes and I think, with the exception that the present provision does forbid manifest unfairness in taxation, that the Legislature should have practically a free hand in imposing any new tax, any substitute tax that might be desired—with the single exception I mentioned before, that an income tax, if imposed, would have to be imposed at the same rate on every person. It couldn't vary according to the wealth of an individual.

MR. FRANK J. MURRAY: What about exemptions to veterans?

MR. MARTIN: If the people desire to exempt veterans because of their personality it would be necessary to have a provision for that, because under the present Constitution you can't distinguish between individuals who have to pay a tax on their property. You can't exempt individuals. You can exempt classes of property or property used for a particular purpose, but you can't exempt property because of the color of the hair of the owner or anything of that sort. That is settled by our court decisions. The present law providing exemptions is recognized by every lawyer as not being defined under the Constitution, but is being observed by general consent.

MR. MURRAY: Then we would need something in the Constitution to allow us to exempt?

MR. MARTIN: I think you unquestionably would.

MR. SIGURD A. EMERSON: If you did exempt veterans, would that preclude any other exemptions?

MR. MARTIN: That would depend on the language used permitting exemptions to veterans. I don't think anyone could predict in advance just what interpretation the court would put on any language that might be selected. It is very easy to arouse a difference of opinion as to what any choice of words means.

MR. EMERSON: Would you give us the benefit of your experience and views as to whether you think there should be any provision providing for exemptions?

MR. MARTIN: I don't think any provision is necessary unless you want to make an exception in the case of veterans. While we all feel very warmly towards the veterans, I don't really think that it is quite fair or uniform to exempt a veteran from a property tax because he owns property and not give another veteran who does not own property a similar benefit. I don't myself favor such a provision. It is entirely settled that without provision in the Constitu-

tion the Legislature can exempt by general law property of a particular type or property that is devoted to a particular use, when the Legislature considers that because of the use of the class of property, exemption from taxation is fair and reasonable. That is entirely settled and you don't need any new provision for that. With respect to the veterans, I think it is very much fairer to pay the veterans a bonus that is uniform than to give special privileges to those veterans who own property.

MR. CULLIMORE: In other words, they are giving special privileges to men who are in the preferred positions. By the preferred positions I mean men who own taxable property.

MR. MILTON C. LIGHTNER: It hardly seems reasonable to give one veteran a preference over another. In other words, it is a discrimination against the veteran who does not own property.

MR. CULLIMORE: It is a discrimination against the wrong man.

MR. LIGHTNER: He probably has to pay a higher rent because of that discrimination.

MR. MARTIN: I think that is true.

MR. EMERSON: Mr. Martin, there have been many statements presented to this Committee, both *pro* and *con*, regarding dedicated funds—specifically the gasoline tax and the motor vehicle tax. I don't know whether that properly comes before this Committee or not, but I wonder if you would give us the benefit of your views on that subject?

MR. MARTIN: I would be very glad to. While I was waiting for the Committee to get together I happened to read the memorandum that is in front of you submitted by the Farm Bureau. I entirely agree with their proposition. I think the matter of dedication of funds should be left entirely up to the Legislature, as it has been. I don't object to the present constitutional provision dedicating certain school funds. I don't think that needs to be extended. I believe that the small dedicated funds which are composed of license fees collected from various pursuits—like the fish and game, and the barbers, etc.—I believe that in fairness and justice those funds should be dedicated. It isn't reasonable to levy a tax on barbers to regulate the occupation in the interest of the public and then use that tax for any purpose beyond the regulation of that occupation. It isn't fair to levy a tax on fishermen or hunters in excess of the fair cost of operating the Fish and Game Department. With respect to the motor funds, the general public, in my opinion, will derive more benefits from dedication of those funds than they would under diversion, except occasionally under unusual circumstances.

Just about the time my term as Tax Commissioner ended, I was interested in the controversy in Essex County over the proposal to

run Route 21 on an elevated highway through Newark. I made a calculation of my own that if the time wasted by Newark businessmen, both their own and that of their employees, and of trucks and automobiles, were actually computed, allowing even only five minutes on each trip for the unnecessary delay they now suffer to get in and out of the city, the annual loss to the businessmen would be sufficient to amortize within 10 years the cost of constructing the elevated highway from Newark junction to the cemetery at the other end. I can't recall the exact figures, but the annual loss to the City of Newark on the number of automobiles coming in and out of Newark over Route 21 alone, and the others who went over to Route 29 and Route 25—the McCarter Highway—was a tremendous figure. The businessmen of the City of Newark lost a lot of money by reason of the fact that the improvement was not made and they are still losing it. I think the general public is benefited more—will be benefited more—by the dedication of all motor funds to highway improvement than by diverting them to other purposes, because I don't think there is any expenditure that the State makes that is as advantageous to businessmen as the relieving of the congestion on the highways. But certainly it should be left to the discretion of the Legislature to change that situation from time to time, rather than tie it up by a hard and fast constitutional provision either way, either permitting or prohibiting dedication.

MRS. RUTH C. STREETER: Mr. Martin, what do you think about the single fiscal year?

MR. MARTIN: I think the single fiscal year would be fine, but I think it should be the first of January—the calendar year instead of July 1. I think that the State can operate a whole lot better on a fiscal year that corresponds with the calendar year than it can with the present fiscal year beginning July 1.

CHAIRMAN: How would that operate with government funds which we get on a 30th of June basis? We would be one-half year out.

MR. MARTIN: Yes, but after all, the government funds are only a small percentage of the total state revenues, and I think it complicates the state and county finances very materially to have a large part of the taxes based on a calendar year and have the appropriations based on a July 1 year.

MR. LIGHTNER: Mr. Martin, you have given us very interesting views on the question of exemptions. I would like to ask one more question, if I may, and that is whether your experience would indicate that there was any need of imposing a constitutional restriction against exemptions? You have referred to the fact that there was no need of inserting a provision in the new Constitution to enable the Legislature to give exemptions, because it already had

that power. I am asking the converse of that. Is it your experience that that power is abused and that any limitation should be placed upon it?

MR. MARTIN: I don't think it is abused. The only instance of real hardship I know is caused where the State takes over property in a municipality to such a large extent that it reduces that municipality's power to raise taxes to operate its local government, and that is to some extent taken care of by legislation. Aside from that, the only complaint that has any justification is excessive exemption of cemeteries. But I don't think that is great enough to be called an abuse. I certainly don't think it is great enough to justify a constitutional prohibition against it. It should be left to the judgment of the Legislature.

MR. LIGHTNER: The proposal presented here on behalf of the City of New Brunswick was not entirely clear—whether the proposal was one that required the State to provide contributions toward the support of a municipality where the State had taken property, as they have in this beautiful city for the University, or whether it was permissive. I wonder if you have any comment to make to the Committee on that?

MR. MARTIN: I have not seen the text of that proposal, but I think that is one of the subjects which could very much better be left to the discretion of the Legislature as to when and how compensation should be made to municipalities for property taken over for public use. In the long run the Legislature could be trusted to deal fairly.

MR. MURRAY: Would they have the power? Suppose it was not a State University—Princeton University, for instance?

MR. MARTIN: That would be in the control of the Legislature. If the Legislature thinks it is too much of a burden, then they could reduce the exemptions. They could not provide for a payment to a private university, but they could limit the amount of exemption the university could have, just the same as there is now a limit to the amount of area of land exempted. I am not sure whether it applies to educational institutions or to churches, but I know there is a limit on the size of the exemptions.

MR. MILTON: I wonder if Mr. Martin would give me a couple of minutes? I promise to make it very brief—within two or three minutes, if you don't mind. I don't want to fall into the role of cross-examiner, Commissioner. I learned many years ago through a number of sorry experiences that cross-examination is a very dangerous weapon for a lawyer to use, particularly to a man who knows what he is talking about as you do. Your approval, if I correctly understand you, of the present language which we find in paragraph 12 of Section VII, Article IV, in part at least, is based upon the as-

sumption that the Legislature is responsible to the public will, and will deal fairly over the years with the subject of taxation.

MR. MARTIN: Yes.

MR. MILTON: The basic philosophy of the proposal which is recommended by the League of Municipalities, which you have before you for the first time, I imagine, represents a complete reversal in policy, does it not?

MR. MARTIN: I should say that it did, although no one could predict with certainty how the court would interpret it.

MR. MILTON: That's right; I agree with that. It is a fact, is it not, that real estate, being fixed and unable to hide, has had to bear over the years up to now the greater portion of the tax burden?

MR. MARTIN: That's right.

MR. MILTON: Real estate can't hide its head under a pillow, like a bond or some other form of security. It is a fact, is it not, that a major portion of second-class railroad property is presently located in the County of Hudson?

MR. MARTIN: Yes.

MR. MILTON: And a major portion of that property is located in Jersey City?

MR. MARTIN: Yes.

MR. MILTON: I assume that you have not yet had the opportunity to read the memorandum submitted to this Committee. That memorandum shows that Jersey City for the year of 1946, as a result of the flat rate of the Franchise Tax Act of 1941, will lose five million dollars in taxes from second-class railroad property. You understand, of course, from your experience as Tax Commissioner and your general knowledge of public affairs, that the Legislature of New Jersey is made up of two bodies, the lower house being the House of Assembly and the upper body being the Senate? And that Hudson County is often outvoted?

MR. MARTIN: Yes, I sat in one of the houses at one time.

MR. MILTON: I appreciate that. Would you agree with me that Jersey City would find it exceedingly difficult in the exercise of popular will to secure a favorable response from the Legislature to correct what would seem to be, at least from the showing made by the League, an inequity, because the city will lose five million dollars?

MR. MARTIN: I think that question is a rather searching one. I would not like to concede the figure of five million dollars loss which you say is indicated in this brief, without studying the figures. I do know from my experience that Jersey City was permitted to get away with a manifest injustice in connection with the utility tax for a great many years before the Legislature remedied that and put the rest of the State on the basis of equality with Jersey City.

I think from what I saw in the newspapers of the treatment rendered Jersey City in connection with some of the arrears of interest in railroad tax, that the Legislature was very fair to Jersey City. I recognize that Jersey City is usually outvoted in the Legislature, but my observation of a good many years has been that in the long run Jersey City never suffered from any act of the Legislature for very long.

MR. MILTON: That is because it has valiantly fought its battles. Thank you, Mr. Martin.

CHAIRMAN: I wish to express the appreciation of the Committee to Mr. Martin for coming here this morning and giving us the benefit of his experience.

MR. RAFFERTY: Mr. Chairman, I wish to announce that Dr. Sly is available for an address to the Committee.

MR. JOHN F. SLY: Mr. Chairman and gentlemen:

I would like to direct my few remarks this morning to the question of the general tax clause you are considering for the proposed Constitution. I have examined several documents which are excellent presentations—by Mr. Aaron J. Neeld on the tax clause,¹ the second of the hearings that was held before your Committee on Tuesday, June 24 pertaining to this matter, and I have likewise a brief of the League of Municipalities, together with a statement by Mr. Smith, the Secretary.

I have examined these documents that have been before you, and I have no doubt that they have been thoroughly discussed. I found that there are at least five proposals that have been placed before you. The first one is the provision in the Constitution as it now reads. The second one to which I would like to call your attention is the one proposed by Governor Edge and submitted to the Legislature when the revised Constitution was before that body in January, 1944, which reads as follows: "Property shall be assessed for taxes under general laws and uniform rules," and then he adds: "according to fixed standards of value." That was included in the joint legislative committee draft of the Constitution of 1944, part of which I shall read: "Property shall be assessed for taxes under general laws and uniform rules according to standards of value as may be provided by law," and they add: "but not in excess of true value." The fourth one is in a communication filed with this Committee by the New Jersey Committee for Constitutional Revision, pertinent portions of which read as follows: "Property shall be assessed for taxes under general laws and by uniform rules according to classifications"—I understand there is a value to be established by law—and then a second clause: "Assessments when made on an *ad valorem* basis shall not exceed the true value of the prop-

¹ See monograph in Volume II.

erty assessed." There is a fifth one presented to you by the League of Municipalities, different from the others: "Property shall be assessed for taxes under general laws and by uniform rules according to its true value," and then this sentence: "The burden of direct taxation upon all real property not exempted, shall be equal."

With the approval of the Committee, I would like to discuss briefly these five proposals from the standpoint of the experience I have had with the tax structure of New Jersey. I think it is agreed by all of those who have studied this subject that the present provision in the Constitution permits us clearly to do four things: In the first place, it is generally acknowledged that it applies to property only. In the second place, the courts have long permitted us to classify property for taxation purposes according to use. Third, the courts have further permitted us to exempt at least certain types of personal property and to place in lieu thereof other types of taxes. And fourth, in the assessment of general property, the judgment of the assessor as to the true value thereof under the rule of the willing buyer and the willing seller has been conclusive unless an appeal has been taken to our tax courts. Those four factors represent in a broad way the limits of our present provisions.

In dealing with the adjustment of tax matters of the State, this provision has fallen short, in my judgment, in failing to give the flexibility to the Legislature that is required, first, to raise adequate revenue for the State in an equitable manner, and second, to protect the productive capacity of the State. I would take it that, in general, this is what an adequate state policy should do, namely, it should permit flexibility to raise revenue adequate to our needs in a fair and equitable manner, and, at the same time, not impair the productive capacity of the State.

In my experience, we have been handicapped under this provision in two ways: First, there has been doubt about the extent of classification to which a Legislature might properly go in setting up what it might consider to be an adequate property tax base. There is no doubt, in my judgment, that the uniform rules provision would prevent us from classifying real and personal property. How far the phrase "uniform rules" would prevent us from classifying other types of property and for different reasons than use, has been a much disputed question among lawyers. For example, if we wish to classify property by character, or amount, or price, the assumption might be, on the one hand, that the Legislature inherently has that authority, because it is certainly not prohibited under this provision. On the other hand, the court might, in certain instances, declare the new tax to be a property tax and prevent us from making the desired classification that the Legislature might find to be in the interest of equity and fairness. And, second, there is this phrase,

"according to true value." I have had considerable experience, gentlemen, with tax structures, not only in New Jersey but in other parts of the country, and I think that I can say advisedly that I know of no state that raises so much money so inequitably as New Jersey, and that this is due, in part, to the restrictions of these constitutional provisions. True value has become almost an impossible yardstick to apply in an industrialized society, with 565 local assessors working on it. We have had studies over the last 15 years to indicate our ratio of assessment to true value. It has been found to vary from 20 per cent to 125 per cent. We know there are many places in the State where property should legally be on the tax books that is not on the tax books at all. We have been familiar with extreme divergences in tax rates as between tangible and intangible personal property. They are due to the fact that we are confined to a rule that permits us only one yardstick, applied on the judgment of 565 local assessors.

These proposals that I have read to you, insofar as they proposed a change in the present provision of the Constitution, deal, it seems to me, with two things: classification, and a measure of assessment other than true value. When Governor Edge added a phrase, "Property shall be assessed for taxes under general laws and uniform rules,"—and you will note, gentlemen, that I think all of the provisions that I have read contain that provision—if carried over from the old Constitution as a general statement of principle, in my thinking it takes the place of due process that we are familiar with in the 14th Amendment. It's part of our basic thinking that we should deal with general laws and by uniform rules. But is that sufficient in itself? And Governor Edge's proposal added, "according to fixed standards of value." That is, if the Legislature should find that other standards of value besides the willing buyer and the willing seller might more nearly meet the tax requirements of the State and might more nearly meet with the requirements of equity and fairness, the Legislature should be permitted to do so.

The third provision that I read carried this thought a little further. It brought in a protection, "standards of value as may be provided by law but not in excess of true value." I don't know that that would add very much to the clause in a realistic way. It would seem to carry the assurance, I think, in the mind of any taxpayer that the Constitution did not contemplate a capital levy in the sense of raising assessments above true value. I am well aware that we could have a capital levy by raising the rate as well as raising the assessments, but, at least, the raising of the rate is an apparent and known device, and assessment increases can be very much more carefully done and more carefully hidden.

Now, the fourth provisions that I call attention to was the one

provided by the New Jersey Committee for Constitutional Revision. It contains all of these proposals that I have suggested, but adds one phrase for clarity. "Property shall be assessed for taxes under general laws and uniform rules"; then it adds this phrase which none of the others has, although it may be implicit in the others, "according to classifications and standards of value to be established by law." In other words, it leaves no doubt that we could classify property for the purpose of taxation. It leaves no doubt that the Legislature could use other standards of value besides true value for either certain classes of property or for property in general, and it provides likewise, in my judgment, a degree of assurance and somewhat of a protection that assessments made on an *ad valorem* basis shall not exceed the true value of the property assessed.

As chairman of the Tax Policy Commission, gentlemen, I discussed this with the Commission, and the members have authorized me to speak in general terms about this matter with you, but any specific recommendations that I make must be my own. If I were to leave a recommendation with you this morning, it would be that, in my judgment, of the four provisions that I have called attention to, the last is the best. It would more nearly suit, it seems to me, the flexibility that a legislature should have to adjust its tax structure to an industrialized society. The one proposed by the League of Municipalities has two objections, from my standpoint. In the first place, it is vague. In the second place, it qualifies classification, and I would wish the Legislature to have the broadest possible power of classification, not only in real property but in personal property as well.

Those, in general, are my broad thoughts on this subject, Mr. Chairman, and I should be glad to answer such questions as the Committee has to ask, provided I can, and if I can't answer, I will try to dispose of them.

CHAIRMAN: Any members want to question Dr. Sly?

MRS. STREETER: Mr. Chairman, the members of the state tax authorities have almost universally testified that they would like the clause left as it is because they fear that new wording would result in long litigation in the courts. What are Dr. Sly's thoughts on that?

MR. SLY: The recommendations I have made preserve the broad, general basis upon which we have always counted—on general laws and uniform rules. With the clear-cut provision to make classification of property and with the clear-cut provision to permit a Legislature to establish standards of value, I don't see how a great deal of litigation could arise, as far as the enabling legislation is concerned. As a matter of fact, as far as litigation is concerned, I don't know a state tax structure that has more litigation than New Jersey at present. There are hundreds and thousands of cases before our tax

courts every year. In any particular change that we make in this Constitution, and with the large amount of enabling legislation we are going to have—and I would include litigation—we are in a transition period, and what we are attempting to do is to adjust the tax structure to fit a new type of base that is more complicated than any base we have ever had before. There doubtless will be many occasions on which we will need litigation.

MRS. STREETER: Do you think we are going to have litigation if we don't change the wording, too?

MR. SLY: Well, I was merely saying we have so much of it now that it is pretty hard to keep up with it.

MR. MILTON: Much of that is due, Doctor, isn't it, to the fact that as a result of the depression of the early '30s standards of value as commonly employed before were destroyed, properties were thrown upon the market as a result of foreclosure sales?

MR. SLY: I think that is true, Mr. Milton, but I think that a large part of it is also due to the inability of assessors to arrive at any adequate measure of true value in the sense of the willing buyer and the willing seller and the complicated property which we have to deal with today.

MR. MILTON: Partly so, and it is due also to infirmity in the administrative process.

MR. SLY: That is true.

MR. MURRAY: Dr. Sly, I was interested in one part of your Commission's report dealing with the assessment of tangible personal property, that is, equipment and machinery used in industry. As I recall, it was recommended that it be assessed at one-half the rate on the true value, but that book value should be construed to be true value, and that, as I recall it, the value to be used in the assessment should bear some relation to the cost. Now, do you think that comes within the present Constitution?

MR. SLY: I am glad that you mentioned that, Mr. Murray, because it is a very good example of the kind of a problem that you face every time that you try to adjust this property tax structure. What we wished to do with that report was to remove machinery and equipment as a part of the business tangibles base from the local assessor, have it State-assessed and State-collected and redistributed to the municipalities. In order to do that, we wished to arrive at a method of value that would be true value, but provide a yardstick other than the willing buyer and willing seller. We don't sell machinery enough; valuation is very difficult. Now, there is some doubt whether we could classify property that way under the Constitution. What we always say is, if we can't think of any other way to do it, we will take a chance on the legal side of it. We are never sure. So what we said in effect was: We will assess machinery and

equipment at the state level at book value which shall be presumed to be true value—which is merely an evasion. Now, we always face that kind of thing. We face it with our intangibles.

MR. MURRAY: Then you add another measure, a relationship to cost, don't you, not exceeding a certain percentage of cost?

MR. SLY: There was a provision in it, I believe, that the value should never fall below 80 per cent depreciation, never fall below 20 per cent cost, as I recall it, but that was merely to put a floor on it.

MR. MURRAY: On the book value?

MR. SLY: Yes, put a floor on the book value. Now, in establishing the rate, there was the other question. We said half the local rate but not to exceed the average state rate. There was a frank classification of rate and property and a different standard of value than true value. We are constantly engaged in planning such subterfuges to get around the law. It is far too complicated a problem to handle in the offhand phrases that were good in 1875. Six or seven years ago, I think you will remember, Mr. Murray, when we first discussed this tangible personal property tax tangle, we talked about the Ohio system. The Ohio system classifies personal property. It provides one rate for bank deposits, one rate for accounts receivable, etc. Well, we were afraid to do that. It always seemed to be plainly evident under our uniform rules that we couldn't do it with personal property. We have all sorts of doubts raised when we talk about any other kind of a tax—a transaction tax, a sales tax, a gross receipts tax, an income tax. There is no question in my mind but what we could levy any kind of a tax we want to under our Constitution, but we are, in my judgment, restricted as to the type of tax, and as soon as you get to framing the tax, you run up against conflicting opinion on the part of counsel. They are not sure, and they can't be sure. They don't know whether we could for sure have a progressive income tax or whether we could classify the receipts of a gross receipts tax. When we had this gross receipts tax before us last year, there was considerable sentiment to classify it, but we were advised by counsel that we were taking a very serious chance. Now, of course, in order to do that we argue whether or not to call it a gross receipts tax or a property tax, but we have had lower court decisions in recent years that have declared income taxes under state constitution provisions similar to ours as property taxes. I think such a decision would be unlikely, but there is always that doubt and it greatly hampers a commission that is trying to make adjustments in this very complicated property tax base, both on the activity side of taxes as well as on the property side. So it is my proposal that the matter of classification be made clear.

MR. WILLIAM J. DWYER: So that when you were in consultation and building up this new thought in taxation, I imagine that

you were somewhat bewildered by factors such as depreciation in value, obsolescence, which sometimes can occur within a very limited period of time in industry. If we are confused now by the deliberation of 565 assessors in the municipalities, I don't know how you could avoid a complete confusion of funds in a tangibles tax, such as is recommended in your deliberations with your associates on this matter. Industry will certainly not be encouraged to find domicile in New Jersey if it has further imposition of taxes. I am talking about long-range thoughts now on how we shall build our State and build its wealth, and just as soon as you affect the productive machinery by any proposals such as were brought forth by your reports, we are looking into a new world of confusion, I am sure.

MR. MILTON: Well, inadvertently; however, it is theoretically assessed at 100 per cent.

MR. DWYER: Yes. I know.

MR. MILTON: This concept is to induce industry to come here in the hope that the blood and sinew of its industry may be favored, and properly so. I don't mean favored in the sense of unfair favoritism, because if industry is attracted to the State, theoretically, at least, the burden on real estate will go down.

MR. RAFFERTY: Favoritism justified by the common good . . .

MR. MURRAY: I did not have doubt from the legal standpoint as to your right to classify that property for taxation even at a different rate, but what I did have doubt about was the true value provision in the tax law—that you could define it in the act to say it should be at book value.

MR. SLY: Well, you see we tried to protect it, Mr. Murray, on the presumption angle. I agree it is a fairly frail phrase to be left open to determination, rebuttal and actual proof.

I merely wish, Mr. Chairman, to leave these thoughts with the Committee as my considered judgment. I feel that our new Constitution should clarify two points, namely, the classification factor and the true value factor.

MR. MILTON: And you favor the recommendation of the New Jersey Commission for Constitutional Revision?

MR. SLY: That meets with my approval more nearly than the others because it seems to contain all the things that I am talking about and contains them in a concise and, to my mind, satisfactory way.

CHAIRMAN: I assure you, Dr. Sly, that you have been very helpful to the Committee. Any further questions?

MR. SLY: Thank you, Mr. Chairman.

CHAIRMAN: You have covered your subject very, very, thoroughly.

MR. RAFFERTY: Mr. Chairman, at this time I wish to present

Mr. Charles A. Brown, President of the State Federation of District Boards of Education of New Jersey.

CHAIRMAN: Very well, we will hear Mr. Brown at this time.

MR. CHARLES A. BROWN: Mr. Chairman and members of the Committee on Taxation and Finance (*reading*):

"July 7, 1947.

To the Members of the Committee on Taxation and Finance and the Legislative Committee of the New Jersey Constitutional Convention of 1947.

Gentlemen:

The State Federation of District Boards of Education of New Jersey is vitally concerned with the question of revision of the tax clause of the New Jersey Constitution, and with the establishment and maintenance of an adequate state educational fund through the proposed revised Constitution. Although it is appreciated that the first problem is within the jurisdiction of the Taxation Committee, and the second within that of the Legislative Committee of the Convention, we are taking the liberty of making this presentation of our views on both these questions in this single memorandum because of the intimate relationship of these matters to each other. Despite the fact that both questions pertain to a common situation, the satisfactory solution of either of them will do much toward ameliorating the serious crisis today affecting the educational system of this State, discussed hereinafter. It will become apparent, moreover, that the full implications of the general situation involved can be best understood by considering the background of both questions jointly.

While the present Constitution, in Article IV, Section VII, paragraph 6, contains a mandate that the Legislature 'shall provide for the maintenance and support of a thorough and efficient system of free public schools,' it is a lamentable fact that this duty has not been observed in so far as state aid for education is concerned. Authoritative surveys indicate that New Jersey is one of the backward states in education despite the fact that it is near the top of the ladder in wealth. This unhappy condition has been brought about because the State has been 'highway conscious.' I approve highway construction, but we must also remember that the children of today represent the future of New Jersey and this nation. If we would but become 'educational conscious,' too, we would reap untold dividends in fine American manhood and womanhood.

We are most deeply concerned with the lack of educational progress in New Jersey during the past 20 years. If anything, we have fallen behind other states because education has been made almost wholly dependent upon one class of taxpayer, the real property owners. The State itself has gravely shirked its responsibility in providing revenues for educational purposes.

Every member of this Committee must be familiar with the tremendous increase in the cost of education during the past few years because of the necessity of raising teachers' salaries in order to keep our educators in the teaching profession and because of greatly increased cost of materials and supplies. Yet, even though teachers' salaries have been raised, they have generally not reached the point where the school districts of New Jersey are insured of having competent teaching staffs either at present or in the future. For instance, over 1,000 emergency teaching certificates have been issued in New Jersey. This means that this number of not fully qualified instructors are being used to teach our children. It is a direct result of the State's lack of foresight in keeping step with the times. We have arrived at a real crisis which cries out for solution.

Close study and analysis of the educational needs of the State of New Jersey by our organization makes it clear that the present tax clause has not measured up to the requirement that adequate funds be made con-

tinually available for the maintenance of the educational system of the State on a proper and sufficient level.

Second, the present constitutional provision for the protection of the fund for the support of free schools does not adequately serve the purpose intended, under present-day conditions, and should be strengthened through revision.

Governor Driscoll has announced that a basic part of his program is increased state aid to schools. He has appointed a commission which is presently engaged in the difficult task of solving this serious question. We submit that a satisfactory solution of the problem now under consideration by that commission will be greatly expedited through the adoption by this Constitutional Convention of the proposals hereinafter submitted by us for revision of both the taxation and school fund provisions of the Constitution.

The connection between the tax clause and the school crisis is this: approximately one-half of the yield from railroad taxes is, under Title 18, Article 3 of the *Revised Statutes*, required to be devoted 'to the maintenance and support of a thorough and efficient system of free public schools.' This fund is subject to a deduction of approximately 16 per cent for general state purposes, and the balance is devoted, first, to the support of 17 specified state agencies of an educational nature, such as the State Board of Education, Commissioner of Education, State Board of Examiners, county superintendents, state normal schools and state teachers' colleges, New Jersey School for Deaf, Manual Training and Industrial School for Colored Youth, evening schools for foreign-born residents, etc., etc., anything remaining being distributable by way of state aid to local school districts.

Prior to 1941, these railroad tax moneys (which we will hereinafter refer to as main stem railroad taxes) were sufficient not only to take care of the 17 specific educational state agencies, but also to provide a balance of approximately 2½ million dollars for aid to needy local school districts. Since 1941, partly through the expanded requirements of the 17 agencies and partly because of the diminution in the proceeds of railroad taxes because of the preferential \$3 railroad tax rate established by the Railroad Tax Law of 1941, main stem railroad taxes have not only been insufficient to yield anything for local school districts, but have fallen short of the requirements of the 17 state educational agencies to the extent of approximately \$5,000,000 annually, which has to be made up out of the general state treasury.

It is therefore obvious that anything which operates to decrease main stem railroad taxes necessarily strikes directly at adequate state aid to education. It is equally clear that anything which operates to reduce that share of railroad taxes which is distributable directly to municipalities (hereinafter referred to as second-class railroad taxes) undermines the principal support of our school system, which is the direct contribution by local municipalities toward the maintenance of the schools in the several hundred local school districts. The Railroad Tax Law of 1941 does both of these things.

The tax preference granted railroad property in the form of a fixed \$3 per hundred rate will operate this year to diminish the total yield from railroad taxation from \$25,600,000 to \$14,850,000, or a loss of approximately \$11,000,000, half at the expense of the State directly, and half at the expense of the municipalities wherein second-class railroad property is situated.

Prior to 1945, as has been recently demonstrated by the brief submitted to the Committee on Taxation and Finance by the State League of Municipalities, any preference in the tax burden on one class of real property as against others was regarded by our courts as in violation of the provisions of Article IV, Section VII, paragraph 12, the present tax clause in our Constitution. In 1945 the Supreme Court held such a tax preference to be constitutional and was affirmed in that holding by our Court of Errors and Appeals. It therefore becomes urgently necessary, *from the standpoint*

of adequate state contribution to both local education and to the 17 state educational agencies theoretically supported by main stem railroad taxes, as well as from that of the ability of local municipalities to pay school costs, that the Constitution should be amended so as to make impossible any legislative tax preference of railroad property.

Although a semblance of increased state aid to schools was recently attempted in the allocation of \$4,000,000 from the proceeds of the new Business Tax Act for school purposes, that aid was accomplished only by a *simultaneous, equivalent depletion* of the revenues of municipalities, which are the main support of our schools, since the provisions of the Business Tax Act included a repeal of the intangible personal property tax law under which the municipalities of the State formerly realized approximately \$4,000,000.

It seems elementary common sense that at a time when the state administration is straining to increase state aid to schools, the very first step should be the *recapture* of the 5½ million dollars of main stem railroad tax moneys which are now annually lost to the State because of the preferential \$3 tax rate on railroad main stem property. It would be the essence of unfairness for the state administration to saddle the already overburdened taxpaying public with additional and new taxes for the purpose of increased educational state aid, without first eliminating the existing 5½ million dollar *state subsidy* to railroad companies, at the expense of education, in effect under the Railroad Tax Law of 1941, as well as the additional 5½ million dollar *subsidy* which the State compels the municipalities to extend to the railroads in the form of the depletion of second-class railroad taxes likewise brought into being by the \$3 railroad tax rate.

We see no reasonable expectation of legislative correction of the existing iniquitous railroad tax situation unless this Constitutional Convention restores the *rule of equality* of property tax burden which our people *thought* they had permanently written into the Constitution when the present tax clause was adopted as an amendment thereto in 1875.

The second branch of this problem, that addressed to the Legislative Committee of this Convention, is the necessity for strengthening Article IV, Section VII, paragraph 6, of the existing Constitution, which directs 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.' As it now stands, this constitutional direction to the Legislature is but a pious gesture. While the total cost of operation of our local school systems is approximately \$180,000,000, the State contributes only \$13,000,000 thereto. For all practical purposes, and particularly in our large municipalities where real estate taxpayers carry the heaviest load, the entire expense of maintenance of the schools falls on the backs of the local real estate taxpayers. Contrast this situation with that existing in the City of New York where, out of a total of an annual budget of \$1,000,000,000, approximately one-half is contributed by the state! In a broad sense, of course, the problem of increased state aid to local schools is one for long-range legislative planning, but that consideration does not affect the desirability of a present *constitutional preservation* of as much state aid to schools as can be encompassed within our existing policy on this subject, as now reflected by Title 18, Article 3, of the *Revised Statutes*.

Specifically, it is our recommendation in this connection that the statutory plan for devotion of main stem railroad tax proceeds to educational purposes should be guaranteed by constitutional provision against future legislative inroads, subject to the modification that there *not* be reserved out of said taxes the 16 per cent hereinabove referred to (one-half of one per cent of the total valuation of main stem property, or one-sixth of the tax proceeds on the basis of the \$3 per hundred railroad tax rate). Such a constitutional provision would, at the very least, give the educational system of the State, in addition to the existing constitutional fund for the support of free public schools, a minimum assurance of continued devotion hereinafter of main stem railroad taxes for educational purposes. Com-

bined with the restoration of an equal tax burden on railroad real property, the educational system of the State would possess a constitutional Bill of Rights of stable character and real significance, as contrasted with the evanescent mirage in our existing Constitution.

We therefore respectfully recommend to the Committee on Taxation and Finance, that Article IV, Section VII, paragraph 12, of the present Constitution be retained, but that there be added thereto the following sentence:

'The burden of direct taxation upon all real property not exempted shall be equal.'

We further respectfully recommend to the Legislative Committee that Article IV, Section VII, paragraph 6, of the present Constitution be retained, but that there be added thereto the following paragraph:

'Without in anywise limiting the generality of the foregoing, the proceeds of taxation of property used for railroad purposes or upon or on account of the exercise of franchises for such use so far as allocated by law to state purposes, shall be exclusively devoted to the maintenance and support of a thorough and efficient system of free public schools, as aforesaid, subject only to deduction for purposes of defraying the expenses of state officers, agencies and funds pertaining to education.'

Respectfully submitted,

STATE FEDERATION OF DISTRICT BOARDS
OF EDUCATION OF NEW JERSEY.

By CHARLES A. BROWN, *President*

MR. MILTON: What is the group that you represent?

MR. BROWN: I represent the State Federation of District Boards of Education of New Jersey. It is a legal body by act of Legislature in 1914. At that time it was chapter 129 of the Laws of 1914. All school boards of the State of New Jersey must belong to the State Federation.

MR. DWYER: Do you think as a result of your studies that if the railroads were assessed as you suggest, it would produce adequate revenue to meet the present needs of our educational system?

MR. BROWN: No, I do not. If you will permit me to answer further, I might say, as a member of Governor Driscoll's new State Aid Commission, that at our first meeting at Trenton there were two subcommittees formed, one headed by Senator Armstrong, of Mercer County, to confer with Dr. Sly of the State Tax Policy Commission, and the other committee headed by Senator Bodine, of Hunterdon County, of which I am member, to try to find other sources of revenue to help finance educational needs. We are absolutely at the cross-roads in education in this State, and in other states, too, and unless the State of New Jersey steps into the picture as it should and adequately finances education, we are going to be faced with federal aid, and I for one do not like to see federal aid come into the schools because it would mean directives and other things and take away local autonomy.

One reason I am in sympathy with the League of Municipalities' proposal is that the municipalities and school boards are chained, so to speak. We depend upon them to raise the money for us to

finance our schools, while in other sections it is put to the voters, but when you have to go before the board of estimate the school boards are outvoted three to two by the mayor and two city commissioners. We know our adequate needs for education but sometimes they are not in the position to meet all the requirements that we request because of their inability to raise taxes on local real estate. In the community where I live our tax rate this year due to a tremendous increase in educational costs—92 per cent of our budget is salaries—amounts to \$67 a thousand.

MR. LIGHTNER: Where is that?

MR. BROWN: Union City—and that is going to the peak, so to speak, and there is going to be some resentment of real estate owners, eventually, dealing with cost. We feel that this will help defray some of that additional cost if all people were treated equitably and not for any reason given preference. If the Legislature can give a wounded veteran preference, next year they could give certain classes of industry preference, or they might give hotels preference, and so forth, so that eventually you would have no source of revenue that we could depend upon. In making up our budget in December, which has to be adopted as of February, we must know our source of revenue in order to tackle the tax rate of our municipality.

MR. LIGHTNER: I understand you to stress, or you implied approval of, the method followed in New York.

MR. BROWN: No, but I said that in the City of New York their school budget is a billion dollars, of which the state provides approximately one-half. Of course, New York State has a great many sources of taxation that New Jersey does not enjoy and New Jersey does not want. I think that we would strike a bit of reaction if we ever proposed certain taxes that New York State has.

MR. MILTON: One being an income tax?

MR. BROWN: Income taxes and other taxes. We don't have that here. Everything here, ladies and gentlemen of the Committee, is mostly borne by one- or two-family houses and other real estate.

MR. LIGHTNER: Do you think that is the most desirable form of tax system?

MR. BROWN: No, I don't. Such realty should bear its equitable share, but there are other utilities and industry that are getting specific benefits by protection—at least, fire and other protection that is necessary—and they should also bear their just and equitable share of the civic burden.

MR. LIGHTNER: Yes, we know that.

MR. MURRAY: Has state aid to public schools diminished since this 1941 Railroad Tax Act?

MR. BROWN: There is no state aid to schools under this act now.

MR. MURRAY: You said 13 million dollars?

MR. BROWN: That is the new Pascoe Plan.

MR. MURRAY: What about the contributions to teachers' salaries?

MR. BROWN: That was taken out of the main stem railroad taxes.

MR. MURRAY: What do you get? About nine million dollars?

MR. BROWN: Yes, about that.

MR. MURRAY: What was it last year?

MR. BROWN: Customarily it is about 8½ million.

MR. MURRAY: Wasn't the budget increased this year by legislation?

MR. BROWN: On account of the new actuarial? I am not a teacher—I am a layman. But I do know that the 1906 main stem railroad taxes in New Jersey were dedicated to the free public schools of New Jersey. Despite a much lower revenue from railroads, they enjoyed monies that were distributed to each school district in New Jersey under that 1906 act. About 1909 a diversion set in, so that in 1941, instead of being first to which the revenues were dedicated, we were 18th and there was not enough money left in the school system in this State to pay for the obituary notices.

MR. MURRAY: You aren't getting any money from main stem railroad taxes?

MR. BROWN: No, not since 1938.

MR. MILTON: It began to siphon off each year?

MR. BROWN: Yes; in fact, during Governor Hoffman's term the State provided for a deficiency appropriation which was distributed to 18 counties. The only counties exempted were Union, Hudson and Essex, but every other county had a loss of money due to a state guarantee of so much for teachers, so much for each pupil, so that the State of New Jersey had to provide for a supplemental appropriation of from two and one-half to three million dollars each year. During Governor Edison's term he put it in into his annual budget, and Governor Edge did the same thing, and Governor Driscoll put it in his budget this year and said from now on there will be no deficiency appropriation after this year. The only thing the schools have is the Pascoe Plan, and this new plan which provides for increased state aid to schools, and they may find a sinking fund for further state aid. The cities are not rich any more. They are poor because they are meeting the impact of large educational costs on account of large salaries.

MR. MURRAY: I understood Mr. Walsh of the State Department of Taxation and Finance to say here the other day—I may be wrong—that there was nine million dollars contributed each year by

the State for the support of teachers' salaries in the public schools, in addition to the 13 million dollars.

MR. BROWN: That is true. Contributions are going to increase each year.

MR. MURRAY: Wasn't the rate of contribution to schools substantially increased on the attendance basis?

MR. BROWN: No, sir. In the City of Newark, and in my own city, Union City, they are getting \$3 per pupil per year.

MR. MURRAY: I thought that was raised by this past Legislature—that rate of contribution per pupil?

MR. BROWN: There was an increase on the last day of \$1,200,000, which was presented to the schools in order to try and get an increased salary bill through which amounted to \$2.04 per pupil, so that Newark and my city and other cities will get \$5.04 per year from the State of New Jersey for each student in their classrooms.

MR. DWYER: We have listened to masses of testimony from various organizations, and they have dwelt on the fact that there is property susceptible to an increase in taxation that will in a measure at least offset the deficiency with which we are confronted. But not one of these organizations has made bold to suggest any alternative taxes that will make up for this threatened deficiency, and may I revert to a very common phrase. "How are you going to get blood out of a turnip?"

MR. BROWN: That would be a miracle.

MR. DWYER: Someone will either have to discuss for the benefit of the overburdened homeowner and the overburdened realty owners of every classification a tax program which will endanger the solvency of the State under the present budgetary plan, or someone will have to do the foolhardy thing of suggesting economy in government—which is not accepted by those who serve the public in the capacity of employees of the State or the municipalities. Of course, on the broad observation that today we have inflation, all these compensations are made necessary because of the increased cost of living. I am in fair sympathy with the thought that we are all entitled to a living wage, but we can't give the living wage unless we get some more money. It has been pretty well demonstrated to me, at least, that bearing heavily down on real property as the sole source of revenue will not accomplish what you folks are seeking through the various committees that have come here. You have not even deliberated, in your moments of concentration with your experts and members, on some alternative form of raising revenue to meet this deficiency. No one has so far.

MR. BROWN: As I said before, there were two subcommittees on this new School Aid Commission appointed by Governor Driscoll under Resolution 6 which was adopted at this last session, and we

are trying to confer not only with Dr. Sly but with an independent committee in trying to find if there is any outside source of revenue that will help defray governmental expenses without further saddling real property. I agree with you that there is a deficit, and the impact on Governor Driscoll's next budget will be tremendous unless there is some new sources of revenue realized, because he has wiped out the surplus revenue until there is nothing left in the bottom of the barrel.

MRS. STREETER: Mr. Brown, in connection with what Mr. Dwyer said, I am sure we are all sympathetic with the school problem and are aware of the difficulties. However, as a private individual you may say anything you desire to say as to what is a good tax, but as a school official aren't you interested primarily in having adequate funds for the schools, and is it a part of that for you to say what type of tax should be levied in order to provide for your needs? Isn't it your chief interest to see that the State makes available the amount of money that is needed?

MR. BROWN: Definitely.

MRS. STREETER: With that settled, then, perhaps it is not necessary for us to write it in this new Constitution. That would be left to the Legislature. You don't care where the money comes from as long as you have enough to fill your needs?

MR. BROWN: No, but I feel all organizations, whether they are common carriers, utilities, or companies, should pay their equitable and just share of tax burdens so that one person is not discriminated as against another.

MRS. STREETER: And as a school official you are primarily interested in getting the funds needed?

MR. BROWN: Yes, that's right.

MR. DWYER: Mr. Brown, my affable colleague here made a suggestion that was quite fair to you. May I make bold to say I was using you as the guinea pig? I wanted to find out if you have given any thought to this matter, or if anyone has given any thought whatever to correcting a deficit by some other imposition of taxes which would relieve real estate of an excessive burden—and if they have, I would like to know because we haven't heard it here at all?

MR. BROWN: There are some sort of general taxes.

(Off-the-record comments by committee members)

MR. DWYER: I am still addressing you, assuming that you are the public at large. New York City came out of the greatest crisis in its financial history by boldly attempting a tax which everybody here in our State—for reasons, of course—in addressing the Constitutional Convention seems to avoid. If you will go over to Gimbel's basement you will note that you are getting an addition to your

purchase price of a certain amount of government taxes which flow into the treasury of the City of New York. We have never thought of that since it was made a matter of so-called public indignation a few years back, but there must be some other means than real estate. We have reached the saturation point in real estate.

MR. BROWN: I agree with you.

MRS. STREETER: Mr. Brown, there are a couple of other things I would like to ask you. You have indicated that all the state aid to schools will have to be increased, irrespective of what was done because of increased costs in salaries, etc. If you get state aid and it amounts to a very large sum, how do you figure on accountability for that money? You said you didn't want federal aid. If you get a high degree of state aid, how do you feel about state aid?

MR. BROWN: We are under state supervision now, under the State Board of Education, under Dr. Bosshart through one of his assistant commissioners, Mr. Anderson, who is in charge of the fiscal administration. We are regulated to a certain extent, and I feel that school boards, by using state aid, should accept that regulation.

MRS. STREETER: I think some of us were electrified by one of the witnesses who said that the School Fund, which only yields \$400,000 a year, should be spent in one year.

MR. BROWN: May I say this in answer to that. I was a member of the Pascoe Committee. I represented the school boards of New Jersey. We tried by hook and crook, if you will pardon my slang, to try and devise ways and means of increasing revenue without increasing some sort of taxation. That seems to be the bugaboo in this State. I am not afraid of an income tax. I am willing to pay my share like everyone else, if it is equal. We recaptured \$500,000 from the State School Fund. We put that in the Pascoe Plan. We recaptured the four million dollar business franchise tax and put that in the Plan, so that we had 4½ million dollars to start out with. All new funds were about six or seven million dollars, because from now on they will meet no more deficiency appropriations. That was another thing they figured they did not need.

MRS. STREETER: Let's discuss this paragraph here where it talks about a fund for the support of free schools. One of the witnesses said it was \$13,000,000 and yielded about \$400,000 annually.

MR. BROWN: Yes, that is the old School Fund of 1837.

MRS. STREETER: He thought the thing to do was to abolish that fund and use the recaptured funds. What do you think about that?

MR. BROWN: It would not be enough.

MR. DWYER: He wanted to liquidate the fund. That is what he wanted to do.

CHAIRMAN: The point is that the School Fund has been grow-

ing every year until it has reached 13 million dollars, and is only producing \$400,000 a year, which is a drop in the bucket. His suggestion was that to relieve the present emergency he would put something in the new Constitution to release that money so that it could be used on this year's and next year's school budget.

MR. BROWN: I would have no objection to that so long as the schools were protected from another source. If the State of New Jersey wanted to take that fund which was set aside for school purposes—that is a fund that began over a hundred years ago—that would be a matter for the Legislature. I say the only money the schools ever received out of that was the income from the money. It has never reached more than \$500,000 a year. If you want to set that aside and substitute another \$500,000, I would have no objection to that.

CHAIRMAN: How about using up the \$13,000,000 for school purposes in one year?

MR. BROWN: You couldn't do that; there would be no fund.

CHAIRMAN: You want to keep the fund there?

MR. BROWN: Yes, and on a stable basis. In 1948, 1949 and 1950, unless some economic depression wipes out everything that we're trying to do, the school boards of New Jersey understand that at the beginning of September they may anticipate help from the State in the form of state aid in making up their budget. That's all they are interested in. If there were no justice, there'd be no school boards or teachers. Just because we have them we must protect them.

CHAIRMAN: Thank you, Mr. Brown.

MR. RAFFERTY: Mr. Chairman, the next speaker on the agenda is Mr. Joseph G. Higgins, president of the Board of Education of Elizabeth, New Jersey.

MR. CHAIRMAN: Very well. We will hear Mr. Higgins now.

MR. JOSEPH G. HIGGINS: I have a statement which I will read.
(Reading):

"July 7, 1947

Committee of Taxation and Finance,
The New Jersey State Constitutional Convention of 1947,
Rutgers University,
New Brunswick, N. J.

The Elizabeth Board of Education has observed with interest the proposal made to this honorable body by the New Jersey State League of Municipalities on July 1, 1947, with respect to its proposal that the present tax clause in the Constitution be supplemented so that equality of taxation upon real estate shall be restored to New Jersey.

Our board of education is in wholehearted agreement with the League's proposal because our study of the situation convinces us that such a tax clause, if adopted in the revised Constitution, would bring about the following:

1. The wiping out of the present discriminatory laws which favor one class of real estate taxpayers at present, the railroads, as against all others. Equality in taxation upon real estate would thus be once again restored to New Jersey.

2. The immediate result would be to bring in \$5,300,000 in additional railroad taxes to the municipalities, which amount of money is now being paid by local taxpayers to make up for the preferential tax treatment accorded the railroads.
3. The State Treasury itself would recapture \$5,500,000 in railroad tax revenues which would be available to make up, in part, the additional state revenues greatly needed for the support of local public schools.

It is a universally acknowledged fact that real estate in New Jersey is bearing a wholly disproportionate share of the cost of government—more so than in almost any other state in the Union. Real estate is the bulwark and mainstay of government in this State. Such being the case it is fundamental that this onerous burden should be divided equally among all classes of real property owners regardless of the degree of their power or influence. Simple justice and equity would dictate such equality.

It is, therefore, all the more imperative that a constitutional provision be made which will make impossible the continuation, or the future enactment, of laws such as the preferential \$3 tax rate for the railroads as compared with the average tax rate of \$5.50 per \$100 of valuations paid by all other taxpayers.

Under the present circumstances the ordinary property owners not only have to bear the crushing impact of municipal, school and county taxes, but they are also being compelled to pay \$11,000,000 in such taxes for the railroads.

It appears to us, therefore, that those who are against equality in real estate taxation are either the recipients of legislative tax favors, or are, for some reason, sympathetic to their cause.

We are particularly impressed by the fact that the restoration of equality in real estate taxation in New Jersey will bring about substantial relief to local taxpayers by the receipt of added second-class railroad tax revenues which in Elizabeth would amount to an additional \$55,576.79, not to mention an added share in the railroad taxes which are collected for state educational purposes.

Such justifiable relief for local taxpayers is of prime interest to any board of education because they are by far the major source of revenue for the local school systems.

There has been much talk throughout the State about the possibility that an income tax, or sales tax, or both, may become necessary in the near future, to relieve the burden of taxation upon real estate, so that our municipal, school and county governments will not collapse. It should be apparent that before there is any talk of lightening the load of taxation upon real estate, there should first be an equalization of the existing burden among all classes of real estate taxpayers. It appears to us that this should most certainly be done before any additional taxes are even to be considered.

As the League of Municipalities has stated, 'equality' in real estate taxation is so fundamental and so obviously just that it should be made a part of our Constitution, so that no Legislature may be tempted, in the future, to prefer one class of real estate taxpayer as against another.

For these reasons we earnestly urge this Committee to adopt the proposal made by the League of Municipalities to the effect that the tax clause in the Revised Constitution read as follows:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. The burden of direct taxation upon all real property not exempted shall be equal.'

In addition, we wish to point out that the State has been lamentably negligent in carrying out the present constitutional mandate 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 5 and 18 years.'

As a practical matter, all that the Legislature has done has been to authorize the municipalities to levy taxes upon local property for school purposes. The contribution by the State Government itself to the 'maintenance and support of a thorough and efficient system of free public schools' has been negligible.

As we have stated above, the adoption of the tax clause proposed by the League of Municipalities would bring about at least an additional \$5,500,000 railroad tax revenues for educational purposes, arising from the taxation of first-class railroad property. This would bring the fund from such source to approximately \$13,000,000 annually. While such an amount can by no means solve the urgent need for substantial state aid to local public schools, it would at least form the basis for a fund for such purposes.

We, therefore, suggest that a clause be included in the revised Constitution which will make mandatory that all railroad tax revenues presently allocated to state purposes be wholly dedicated to a fund for the 'maintenance and support of a thorough and efficient system of free public schools.'

This suggestion is made because the Legislature has annually usurped a substantial portion (16 2/3 per cent) of first-class railroad taxes to purposes other than educational. In our opinion it would be most beneficial and appropriate if the state fund for aid to education were insured of receiving all railroad taxes now devoted to state purposes. If this latter proposal does not come within the province of the Committee on Taxation and Finance, we would appreciate this Committee's forwarding it to the proper committee.

Respectfully submitted,

JOSEPH G. HIGGINS,

President of the Board of Education of the
City of Elizabeth, New Jersey"

CHAIRMAN: Any questions?

MR. DWYER: You made a statement that there was a specific amount that you could get in increased revenue?

MR. HIGGINS: Yes, in second-class railroad—

MR. DWYER: That was done as a result of properly arrived-at figuring, through bookkeeping and knowledge?

MR. HIGGINS: Yes, sir. Do you want them?

MR. DWYER: No, I just wondered if you did, instead of giving us a figure and then not being able to support it.

MR. HIGGINS: I can support that figure.

MR. DWYER: You are very happy in that you have two main line properties going through your city?

MR. HIGGINS: Yes, sir.

MR. RAFFERTY: And they mean considerable to the board of education?

MR. HIGGINS: Yes, sir.

MR. RAFFERTY: You have considerable main stem property and also second-class property?

MR. HIGGINS: Yes, we have a second-class property valuation of approximately \$2,902,000.

MR. RAFFERTY: I suppose because of the large aggregation of railroad property, both main stem property and second-class prop-

erty, in and around the City of Elizabeth, that it arouses your interest in this matter in a particular way?

MR. HIGGINS: Definitely, sir.

MR. RAFFERTY: Is that what you were getting at, Mr. Dwyer?

MR. DWYER: Yes, the entire way it was brought on—this specific increased levy. I am not in disagreement with that principle. I wonder if it will take up the entire deficiency in the school system throughout the State. The funds distributed throughout the State, from the State to the school system, is revenue derived from main stem property.

MR. MILTON: I suppose the genesis of this thing is, Mr. Higgins. . . . Here is a concrete proposal made by the League of Municipalities which, if incorporated in the Constitution, would automatically result in increasing railroad taxes and hence benefit the school system?

MR. HIGGINS: Right.

MR. MILTON: That is why you are here this morning? To make a concrete proposition?

MR. HIGGINS: Yes, sir, and if you wish me to, I will cite a specific instance. If you wish me to do that. . . .

MR. LIGHTNER: What this proposition really means is, because the legislation under our present tax clause came on the basis of taxation, that you wish the delegates at this Convention to get that modification in the Constitution instead of leaving the matter to the Legislature for correction?

MR. HIGGINS: Yes, sir.

MR. LIGHTNER: Why isn't the proper appeal to the Legislature?

MR. HIGGINS: As I understand it, you are here in session to revise a Constitution.

MR. LIGHTNER: We are sitting to revise a Constitution. We are not sitting in judgment to formulate a basic Constitution for the State. Many witnesses before this Committee have emphasized the desirability of leaving the Legislature as greatly free as possible in the matter of the formulation of a wise tax policy.

MR. RAFFERTY: I suppose, Mr. Higgins, your point is that the Legislature took it away from the boards in 1881 and you can't get the Legislature to give it back again?

MR. HIGGINS: That's right.

MR. LIGHTNER: What the Legislature took away it could restore if the facts warrant it.

MR. MILTON: We don't live in a vacuum.

MR. HIGGINS: I guess that is all, sir.

CHAIRMAN: Any questions? If not, thank you very much, Mr. Higgins.

There are no further persons listed to address the Committee. Does anyone present amongst our visitors care to make any expression?

COMMITTEE MEMBER: Mr. Chairman, Mr. Conford desires to speak again to the Committee.

MR. MILTON B. CONFORD: The thing that inspires my desire to say a word to the Committee, is the two questions that were addressed to both of the previous witnesses by Mrs. Streeter and Mr. Dwyer. The question was raised as to why these organizations do not make a plea for further and broadened tax revenues rather than concentrate, as apparently they are doing, on one, specific revenue source. It seems to me that the answer to that must be based upon a consideration of what this Constitutional Convention is designed to do. It isn't designed to become a legislative body; it is designed only to lay down the basic principles affecting tax laws.

I think everyone who has appeared before the Committee agrees, and the Committee itself unanimously would agree, that it is not the function of this Committee to prescribe new taxes or forms of taxes, or answer the complicated and difficult problems as to how the State specifically could raise the moneys which are needed to relieve real estate.

All that the Constitution is concerned with is that which is basic. So far as the State League of Municipalities is concerned, it has, I think, developed that one thing that is basic—the one thing that was regarded as sufficiently basic by the people in 1875 to warrant the writing of any tax clause into the Constitution, which was done for the first time in 1875—and that was unconscionable tax preferences to one class of property. That was the very incentive which caused any tax clause to be written into the Constitution.

Now, I think that the people on behalf of whom I have spoken take the view that which was basic in 1875 is no less basic today. As a matter of fact, it is even more basic today because of the increasing proportion of the general governmental expense which real estate is called upon to bear. And if it was basic back in 1875 that all classes of real property should, by constitutional mandate, be required to bear that burden equally, it is even more basic today that that burden thrust upon real estate should continue to be equal. So that I think that the people to whom the questions of the delegates were addressed might properly respond, that while they are concerned, and properly concerned, with development of new revenue sources to relieve real estate, the development of such sources is certainly not the function of a Constitutional Convention. That is the function of the Legislature; but when the Legislature undertakes to raise funds for the support of government and countenances a system under which 95 percent of that burden is

thrust upon one class of property—real property—that it then becomes basic and quite appropriate that this Committee—this Constitutional Convention—be requested to make the imposition of that 95 per cent burden equal upon all classes within the specific class, which is real property.

MR. LIGHTNER: Your argument comes down to the proposition that the Legislature has enacted an unconstitutional law and the courts erred in declaring that it was constitutional.

MR. CONFORD: Yes, my proposition comes down to the fact that the 1941 \$3 railroad tax law would have been held unconstitutional by the Court of Errors and Appeals of 1908. That court decided that a railroad attack upon the then existing railroad tax law was not valid, saying that so long as the tax burden, as between railroad property on the one hand, and non-railroad property on the other, is equal, neither party may complain as to constitutionality; thereby clearly inferring that if the property tax burden were not equal, the law would be unconstitutional. We think that the Court of Errors and Appeals, in upholding the constitutionality of the \$3 railroad tax rate two years ago, definitely overruled the prior decision of the Court of Errors and Appeals; and if the subject matter of that decision is regarded as basic (and we think it is), and if this Convention agrees that the people in 1875 were right in writing a tax clause into the Constitution, language should now be attached to the clause to make the clause, in effect, do what it was originally intended to accomplish.

MR. LIGHTNER: Doesn't the excise tax that is paid by the railroad make up to some extent for the difference in taxation of its main stem railroad?

MR. CONFORD: No. As a matter of fact, as we pointed out, the yield from the excise tax has decreased every year from 1943 down to date, either because of evasions through corporate separations, as the Central of New Jersey has done and which has completely wiped out its franchise tax to the State, or through other devices. So that today, whereas it was expected that at times of high earnings in general periods of prosperity such as we now have, the franchise tax would be very substantial, as a matter of fact this year it is only \$1,600,000 which, added to the \$3 property tax, makes a total railroad tax of under \$15,000,000. Whereas, without a franchise tax, but with just a simple assessment of the property at the local rates and the average tax rate, there would have been a return to the State this year of over \$25,000,000.

MR. MILTON: And that makes the difference of \$11,000,000?

MR. CONFORD: Right. The position further is this—that it is entirely improper to confuse the issue of a franchise with the issue of a property tax. Franchise taxes are levied by the Legislature

against all kinds of corporations. The type of franchise tax which should be levied is a matter in respect of which the Legislature should have complete and unlimited discretion, just as they now tax general corporations on so much per capital stock issued, and in the case of railroads they prefer to make it on the basis of net railway operating income. But those interested in protection of real property don't care what the Legislature does insofar as franchise taxes are concerned. They don't care whether the Legislature completely exempts the railroads from a franchise tax if the Legislature thinks that the railroads should be exempted from a franchise tax. A franchise tax, in theory, is merely the compensation paid by the corporation to the State for the privilege of operating under a corporate franchise. In every single type of corporation in this State, a franchise tax is paid.

Now, the question of a franchise tax should therefore be laid to one side. The Legislature should assess against the railroad companies such type of franchise tax as shall be regarded as equitable; but when it comes to real property, that's an entirely different subject and should not in any way be confused with the franchise tax. The tax burden on that real property should be equal with respect to every type of corporation. Now, there is every type of corporation in New Jersey today. Every type of real property owner of every class, with the exception of real property used for railroad purposes, pays the local rate—the utility companies, the gas and electric companies, food processors, milk companies—all of the numerous types of industries which are vitally affected with a public interest just as much as the operation of the railroads, pay the local rate on their real property. We can't see what possible justification there can be for taking one type of enterprise only, particularly when it is operated for private profit and paying a franchise tax just as any of the others do and giving a \$3 rate on real estate to it only.

Let me just close with this one observation. Let me illustrate what I say about the fact that railroad companies, although concededly affected with a public interest, are primarily profit-making operations. The Pennsylvania Railroad Company of New Jersey does not own a foot of track in the State of New Jersey. It rents its entire railroad main line from Philadelphia to New York from the United New Jersey Railroad and Canal Company under a lease made in 1871 for a period of 999 years. It pays the United New Jersey Railroad and Canal Company rent at the rate of a fixed return of 10 per cent on each share of common stock outstanding of the United New Jersey Railroad and Canal Company, plus all the taxes, plus the upkeep of the road. In other words, the United New Jersey Railroad and Canal Company, the landlord of that line,

with 212,000 shares outstanding, which are held by institutions, banks, individuals and everybody else—those shareholders get 10 per cent on their money every single year from the Pennsylvania Railroad Company. And for the opportunity to receive that return on their investment and in order to help make it possible for them to receive that return on their investment, our Legislature has said that the real estate used for that purpose shall pay one-half the rate that other property pays. It seems to us, really, nothing less than unconscionable that real property devoted, in finality, to the purpose of earning dividends on stock, interest on bonds, should be subsidized by a half-rate railroad tax rate, when other real property is so horribly strangled by the system of taxation and governmental operation which we have in this State.

COMMITTEE MEMBER: Well, the tax rate of three per cent wasn't fixed because the Pennsylvania Railroad now pays \$10 a share on its stock.

MR. CONFORD: Certainly not. When the Legislature fixed the three per cent rate, and a franchise tax based upon earnings, it did so upon the basis that the railroad companies were affected with a public interest and the State should give them a sliding tax burden.

Now, the point that I am making, when I mention that \$10 per share of dividends, is that railroad property in the State is operated for private profit in as full and complete a sense as any other commercial enterprise, and that the fact that it is affected with a public interest is no ground at all for relieving the real property used in that private profit operation from the same burden and expense to which other real property is put, under a system where real property is called upon to pay 95 per cent of the cost of local government.

MR. DWYER: Will you be kind enough to get the record in line so that it will be understandable to the man on the street? You say \$10 a share is paid to the owner of shares of the Pennsylvania Railroad?

MR. CONFORD: I say this—the Pennsylvania Railroad Company leases its railroad in New Jersey from the United New Jersey Railroad and Canal Company, and under the lease it pays by way of rent \$10 per \$100 par value share of stock, plus the taxes, plus the maintenance of the road there. So that I say that real property which is favored by a \$3 tax rate, is being used in an ultimate sense to return dividends of ten per cent—

MR. DWYER: I understand the process, but what I want to clarify is the last-given impression that there's a \$10 dividend paid by the Pennsylvania Railroad to shareholders, to an individual—

MR. CONFORD: I'm not talking about the dividend the

Pennsylvania Railroad pays to its shareholders after they get through paying their rent.

MR. DWYER: Well, there is always a possibility of confusion.

COMMITTEE MEMBER: That \$10 you speak of, is that a sort of a contract between the United Railroad and Canal Company—

MR. CONFORD: That is the lease made in 1871. That is the startling instance—I don't want to leave the members of the Committee with the impression that that's typical. Most of these lease arrangements run about five per cent. The Lehigh Valley Railroad Company operates from Phillipsburg, New Jersey, to Jersey City under a lease from the Lehigh Valley Railroad Company of New Jersey under a provision whereby they pay five per cent on the bonds outstanding of the owner company. I think that five per cent is the pretty general situation in most of these leases, and four-sixths of all of the railroads in the State operated with leased lines under arrangements like this up until the last few years. In 1940, the Erie, which had leased from 16 operating companies, took over those 16 operating companies; and the owners of the stocks and bonds of the operating companies now have stocks and bonds of the Erie Railroad Company.

MR. EMERSON: I don't see how it makes any difference whether you pay \$10 a share or \$2.50 a share. The United Railroad and Canal Company could issue four times as many shares as it actually did, and the railroad company agree to pay \$2.50 a share. I don't think it would make any difference. I think the cost of operating a railroad is a matter for the Interstate Commerce Commission, for the purpose of determining rates. We don't know what went into the negotiations of fixing the \$10 value. That there are 1,000 shares or 5,000 shares, I don't know.

MR. CONFORD: No, there are \$100 par value shares, Mr. Emerson.

MR. EMERSON: What is the value of the property?

MR. CONFORD: Well, I have produced these facts that I have mentioned in these past few minutes only for the purpose of disabusing the mind of anybody that might have the impression that railroad corporations are public service companies, like a publicly-owned utility. They are not; they are operated for private profit.

MR. EMERSON: We know that, but they are certainly a public institution. There is a public interest.

MR. CONFORD: Certainly they're affected with a public interest, and the fact that they were affected with a public interest is the reason why, prior to 1860 and 1870, our State Legislature and the legislatures of many other states, felt justified in making grants of land and donations of money to them, and subscriptions to their stock, and so forth and so on. But it was the abuse of that financial

aid which led to the series of constitutional amendments in 1875 in this State, and in many other states. Our 1875 amendment is our tax clause, Article IV, Section VII, paragraph 12, and the distinction which has been made ever since is that merely being affected with a public interest is no justification for public subsidization. If the organization is to be subsidized, or helped by the State, it must be owned and operated directly by the State. As long as it is not, it is in the same category as any other privately operated enterprise.

CHAIRMAN: Does the State of New Jersey have a director on the board of the United New Jersey Railroad and Canal Company—

MR. CONFORD: I don't know.

CHAIRMAN: . . . who's elected by the Legislature?

MR. CONFORD: That may be. I wasn't aware of that fact.

MR. DWYER: There reposed in the Treasurer's office at one time, stock of certain of these railroads.

MR. CONFORD: That may have been from the original charter.

MR. DWYER: The State of New Jersey was the beneficiary of some of those dividends in days gone by.

COMMITTEE MEMBER: I don't think they have liquidated all of their regular stock as yet.

MR. DWYER: Apparently you assume that our concern, my concern—I may speak for Mrs. Streeter—is just to fix upon you the responsibility of suggesting a new matter now. What I am trying to do is to get some information in the broader interests of the people of the State, instead of kidding ourselves that the railroads can make up any deficiency, and that it is overemphasized here that the railroads have been the beneficiaries of a discriminatory tax levy. I'm not in disagreement with that wholly, but I'm realistic. You say it's basic; I say let's deal in realism. And from a purely realistic standpoint, we can toss the mulberry bush here for years, and we won't be able as a finance committee—not a tax committee, but a finance committee—to give any suggestions as to how the deficiencies can be met unless the people come to their Constitutional Convention and make some definite recommendations; and you represent a segment of the people, many people.

COMMITTEE MEMBER: There is no question that the additional \$11,000,000 that would come from equal taxation of railroads is only a small part of what is needed.

MR. CONFORD: But the raising of what more is needed is a legislative problem. The only reason why that \$11,000,000 is a constitutional question rather than a legislative question is because it arises from the segregation by the Legislature of only one type of real property. There is an over-emphasis on railroads because, by

definition, the Legislature has taken only that type of property for this type of treatment. If they had selected several types of property for that type of treatment, the emphasis would be spread over whatever they—

COMMITTEE MEMBER: Well, would you like to chastize the Legislature for its past delinquencies in levying taxes?

MR. CONFORD: We would like no more, no less, than to have it fixed in the Constitution, as we think it was intended prior to 1946, that all owners of real property should equally bear the burden.

CHAIRMAN: Are you going to go further into it this afternoon?

MRS. STREETER: I think it is time we come to a halt.

CHAIRMAN: We stand adjourned until 10:30 tomorrow morning in the big room.

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

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Thursday, July 10, 1947

(Morning session)

(*The session began at 10:00 A.M.*)

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The Committee will kindly come to order and the Secretary will note those present. I will have the Secretary read the order of the day and call the witnesses, this being the witness chair here; and to those witnesses present, I'd say that if you will talk right into that microphone, it will be very much appreciated.

MR. JOHN J. RAFFERTY: Mr. Chairman, in accordance with arrangements heretofore made, this meeting place has been arranged for hearings on the questions of exemptions from taxes and dedication of State revenues, both *pro* and *con*. The first gentleman to present himself this morning for discussion of any of these matters is Mr. James Kerney, Jr., of Trenton, editor of the *Trenton Times* and chairman of the Committee for Constitutional Revision, who desires to address himself to the question of dedicated funds in the state revenue. . . . Mr. Kerney, Jr.

MR. JAMES KERNEY, JR.: Mr. Chairman, Mrs. Streeter and gentlemen:

I represent the New Jersey Committee for Constitutional Revision which is a group of state-wide organizations, including the New Jersey Association of Real Estate Boards, the State Federation of Labor, the State C.I.O. Council, the State Federation of Women's Clubs, Consumers' League, Association of University Women, League of Women Voters, and the State Council of Churches. These groups have over several years joined together in an effort to aid constitutional revision and have prepared a minimum program which they feel should go into the basic law of the State. Part of that minimum program, on which all of these organizations are agreed, is a single state treasury and a single state budget, so that all the funds of the State would be put into one treasury and drawn out for expenditures under one budget.

We are opposed to the dedication of funds for any specific purpose whatsoever. I appreciate, as do the other members of this Committee, that there is a great need for a fine highway system in New Jersey. I am hopeful, along with many other citizens, that we will have the finest highway system in the country. I believe today we have the finest system of secondary roads, and the present system of state spending for highway uses has provided us, by and large, with an excellent highway system, a system which is being improved under present plans, a system which will, I am sure, bring us the finest state highway set-up of any state in the Union.

It hasn't been necessary in the past to have dedicated funds in order to accomplish this purpose. It isn't necessary now. We feel that just as any business operates, as any individual operates, with a single treasury and a single budget, the State should also so operate. There is complete agreement among all these organizations, which form our committee, on this subject. I would like to note a little anecdote which perhaps explains our opinion as well as anything else I might say.

A few years ago, I used to do some book reviews for literary publications, and the emoluments paid were not great because literary publications aren't too wealthy. I used to get checks every so often for \$3 for these book reviews. It was not very profitable, but very pleasant work; and I would have read the books anyway. The checks used to come home, and my children used to take what I called the "odd-job" checks. With my connivance, they always went to buy a two-pound box of Whitman's chocolates, and my children, not being too slow on their feet, used to look forward to this and scan the mail pretty carefully. A few years ago I came home one night and had an envelope from *Commonweal*, a magazine for which I had written an article, and my ten-year-old daughter said, "Daddy, I think there may be an 'odd-job' check here." I opened it. She waited and she said, "Is that right?" I said, "Yes, you're quite right." She said, "How much is it?" I said, "sixty dollars." She said, "Oh, Daddy, \$60 worth of chocolates."

I think if the State of New Jersey takes any portion of its revenues and assigns them in that manner, we are being very foolish. I feel that the Legislature can be depended upon to handle the appropriation of state funds; and the time may come, as it did in the past, when it is vitally necessary to take some of the highway monies and use them to feed the unemployed of New Jersey, as we had to just a few years ago. That time may again come. We all hope it won't, but there should be no restriction on the Legislature from using state funds for the benefit of all the people, to the best advantage of New Jersey.

I want to thank you very much for your kindness in permitting me to come here today.

CHAIRMAN: Mr. Kerney, are your remarks pointed at paragraph 2 of the section on finance—I think it is Section VII—of the 1944 proposed Constitution?

MR. KERNEY: I believe that is right, yes.

MR. ALLAN R. CULLIMORE: May I ask that Mr. Kerney enumerate again the organizations which your committee represents?

MR. KERNEY: Yes, Dean Cullimore. The complete list of organizations which are part of our committee and which agreed on this proposal are: The New Jersey Association of Real Estate Boards, State Federation of Labor, State Council of the C.I.O., State Federation of Women's Clubs, New Jersey Taxpayers' Association, National Council of Jewish Women, Consumers' League of New Jersey, Association of University Women, State Federation of Colored Women's Clubs, League of Women Voters, League of Women Shoppers, and the State Council of Churches. That's the complete list.

CHAIRMAN: Any further questions?

MR. MILTON C. LIGHTNER: The single budget advocated by the organizations which you represent was, in effect, enacted by legislation of the State Legislature. Is that not so?

MR. KERNEY: That is absolutely true. We now have a single budget.

MR. LIGHTNER: Is the proposal which you are presenting one which differs in any appreciable respect from the legislative enactment?

MR. KERNEY: No, Mr. Lightner. The proposal we make doesn't in any way differ from present practices. It would make present practices a constitutional mandate rather than a legislative action. It doesn't in any way alter the present practices of the State.

MR. LIGHTNER: I understood you to say that you favored allowing the Legislature, or rather entrusting to the Legislature, the proper payment, proper appropriations of funds, for highways and other types of expenditures for which so-called dedicated funds have in the past been provided or are sought for the future.

MR. KERNEY: That's right. I think that the Legislature can be entrusted very properly with the task of determining where the money can be used to the best advantage of all the people.

MR. LIGHTNER: Can you tell me, can you give me any reason as to why it is not desirable also to give the Legislature authority to continue to deal with this question of the single budget as they have in the past? I mean, you are proposing a certain constitutional amendment, or a certain constitutional provision, and there have

been many proponents who have sought constitutional provisions directly opposite to those proposed by you. I am inquiring as to what reason there may be for not having the Constitution remain silent on this subject and continue to leave the matter in the hands of the Legislature.

MR. KERNEY: I think the reason would be—

MR. LIGHTNER: I am not opposing the system of the single budget. I am inquiring, probing, as to why it is considered necessary to have constitutional provision of that character.

MR. KERNEY: There are two aspects to the answer, Mr. Lightner. One is that the Legislature has just recently adopted the idea of a single budget and a single treasury, in effect, and we feel that the adoption of that idea was long overdue. We would like to see it solidified and made permanent by constitutional proposal.

The second aspect is that there are a great many opponents, as you have noticed, to the idea of a single budget and a single treasury. There are those who would much prefer to see the Constitution dedicate funds, particularly to highway use. To that we are completely and unalterably opposed, and I feel it would be a—

MR. LIGHTNER: And my question should not be interpreted as indicating any support for the dedication of funds by constitutional provision.

MR. KERNEY: I understand that. I understand. You were simply asking a question and not—

MR. LIGHTNER: I want to know what reason there may be for insisting that the Legislature have freedom of action, but depriving it of freedom of action in the other direction.

MR. KERNEY: Our theory is that the Legislature should have freedom of action to appropriate funds as it determines for the best interests of the State. Our feeling, at the same time, is that it should be done in a single budget and out of a single treasury, which would, we feel, be an accomplishment in better business management for the State.

CHAIRMAN: Any further questions?

MR. CLYDE W. STRUBLE: Mr. Kerney, if the Constitution remains silent on dedicated funds, would that meet with your approval?

MR. KERNEY: I would prefer, Mayor, to see the Constitution, as I suggested, have a demand a single budget and a single treasury. The alternative of taking no action on this would be infinitely preferable, of course, to the dedication of funds. The thing we feel strongest about in this Committee for Constitutional Revision is opposition to the dedication of funds and restriction upon the Legislature in that respect. We feel very strongly about that. All the

individual constituent members of our committee are agreed upon that.

CHAIRMAN: Any further questions? Dean Cullimore, have you any further questions?

(Silence)

CHAIRMAN: Thank you very much, Mr. Kerney.

MR. WILLIAM J. DWYER: Mr. Kerney—

CHAIRMAN: Oh, excuse me, Mr. Dwyer.

MR. DWYER: You are advised, sir, that we have a mass of pleadings and testimony before us on this moot question. The thing that you haven't emphasized, and which I feel is your obligation as a suppliant before this group, is to be more specific as to why you want to keep the bird in the cage by locking the bird in under a constitutional protection. We have confidence in our representative form of government—some of us I believe—and are ready to entrust to the discretion of the Legislature that which is best in the interest of the people. If you can present a reason that is not a generalization, it may be very helpful in our future deliberations. Have you complete confidence in the Legislature in the allocation of funds for the common good, or do you doubt it and therefore want to make it a constitutional provision?

MR. KERNEY: No, I think, Mr. Dwyer, that it's a basic part of our democratic constitutional government that the Legislature shall have the full authority for the appropriation of funds, and with that I can see no argument. We feel that it would represent a better business management for the State if, constitutionally, we had a single state treasury and a single budget which would prohibit the dedication of any funds. What we are seeking to do is to prohibit the dedication of funds. We don't prohibit the Legislature from expending funds as it sees fit for the best interests of the State, and it may very well be that the Legislature would want, and would decide, to spend all the gasoline tax revenues on highway, for highway purposes. That is within the purview of the Legislature. We would like to see a prohibition on the dedication of funds, and to effect that prohibition we suggest a single state treasury and a single state budget. Does that explain the—

MR. DWYER: I think that is sufficiently adequate as an answer.

CHAIRMAN: Any further questions? . . . Thank you very much Mr. Kerney.

I might state to those who have come in late that the question of dedication of funds will be taken up at two o'clock this afternoon. There are a great many persons to speak thereon who are biding their time. However, we have listened to Mr. Kerney because he has to preside at a Community Chest meeting in Trenton today and will not be able to be here this afternoon. He is representing the

Committee for Constitutional Revision and wanted to be heard. Our regular hearing this morning is on the exemptions to the tax clause. We have announced that more particularly, and I'll ask the Secretary to announce the next speaker.

MR. RAFFERTY: I present the Honorable John A. Matthews of Newark, a counsellor-at-law in that city, who speaks for and on behalf of the Catholic Archdiocese of Newark on the subject matter of tax exemptions. Judge Matthews.

MR. JOHN A. MATTHEWS: Mr. Chairman and members of the Committee:

I come here this morning as a representative of Archbishop Walsh of the Archdiocese of Newark and also of the Archdiocese of Newark to ask you respectfully to recommend an inclusion in the draft of the Constitution with respect to taxation—a clause exempting educational, religious and charitable institutions, or the property thereof, from taxation.

I don't need to tell the lawyers of this Committee that this exemption is provided for now in our statutory law. I don't need to tell either the lawyers or laymen or women of the Committee that this exemption has an historical background; that the very essence of it is that the State receives for this exemption what the decisions of our courts call a *quid pro quo*—something for something. I think that the philosophy of this exemption is important, and I'd like to speak about it for a moment.

The exemption of religious and charitable and educational institutions certainly is something that we must consider in these days when religious and educational and charitable institutions are in what we might call a state—sometimes I'd like to call it a state of attack. A great many persons today are of the opinion that a statutory provision is sufficient to protect these institutions. The only reason why, in my humble opinion, we need a constitutional provision, or should have one, is because all of these institutions—religious, charitable and educational—find themselves forced, year in and year out, to go, in protection of their exemption, before the Legislature, because attempts are made very frequently and often collaterally to undermine this exemption.

If it is in the basic law, then indeed it cannot be subject to such yearly attacks. I consider that the exemption of charitable, religious and educational property from taxation is almost the right of the people. It's the American way to do it. I was interested a moment ago in hearing Mr. Dwyer ask Mr. Kerney whether he didn't have confidence in the Legislature. As I look over at Senator Read, who was in the Senate from Camden in 1912 and 1913 when I was in the House, I would say that both he and I in those days, and both he and I today, and citizens today generally, think that legislators, by

and large, do a very good job and certainly are a part of our representative government. Nevertheless, it is true to any realist who has been a member or to any realist who has observed, that legislatures are more subject to "pressure groups," and I use the words "pressure groups" respectfully, than would be, for instance, the courts, in determining any question on exemption such as I am asking for here today.

I grow a bit tired when I hear people idolizing one branch of our government and becoming forgetful of another. I don't think the question here has to do with our lack of confidence in the Legislature to provide us with statutory enactment. Rather do I think that we ought to make a gesture to these great foundations in the life of our State—religious, educational and charitable—by saying to them in this new Constitution and in this new day, "We're going to see to it that in our basic law you will be exempt from taxation."

That, to my mind, is the basis and the reason why we who represent the charitable, education and religious institutions seek the inclusion of it in our basic law. I will be glad, after expressing my gratitude for the privilege of appearing before you, to answer any questions, if I can, that you may ask me.

MR. SIGURD A. EMERSON: Mr. Matthews, at the present time there is no tax on intangible personal property in New Jersey. That was accomplished by an act of the Legislature in 1945. I am in sympathy with the exemption of taxation of property as indicated by you; but if such a provision were inserted in the Constitution, would it not bring back taxes on intangibles, assuming that it is a desirable thing for the State?

MR. MATTHEWS: You mean, Mr. Emerson, that the exemptions which are now being granted, and which would only be protected in their being granted perpetually by being in the basic law, would make any more difference than they have when you put this intangible exemption or intangible—

MR. EMERSON: No. What I mean, Mr. Matthews, is that if you exempt certain property, does that exclude all other property from exemption?

MR. MATTHEWS: I am only interested in—I am not interested presently in the wording of it; I will be—but the exemption that I would propose would be an exemption, a general law of exemption for all religious, charitable and educational institutions. Now, there are other exemptions which may be sought.

MR. EMERSON: Well, if they are sought, they undoubtedly would have to be expressed in the Constitution as well.

MR. MATTHEWS: Under the theory that the exclusion of one or the mention of one would mean the exclusion of another?

MR. EMERSON: Yes. Would you be opposed to a provision in

the Constitution which would also exempt intangible personal property from taxation?

MR. MATTHEWS: I might state my personal opinion, but as a representative of the Archbishop of the Archdiocese of Newark, I could express no opinion. I had much to do, on behalf of the City of Newark, with the taxing of intangibles some years back; and in that work I found that the taxation of intangibles was really and truly a hardship on a corporation. While my bent all over the years has been with the common man, I have never lost sight of the fact that the common man has his dependence upon the corporations existent in the State, too. Therefore, I would say, offering you a curbstone opinion as a lawyer, and speaking only for myself, that I wouldn't like to see you go as far as exempting intangibles in the Constitution, but I would like to see you protect the intangible statute in some other way. I don't think you ought to put it in the Constitution.

MR. EMERSON: Mr. Matthews, I think our courts, during the last couple of years, determined that the stadium of Rutgers University was taxable, on the theory, I believe, that if any such tax exemption provisions were made, it would be necessary to exclude such property, since it is utilized for profit.

MR. MATTHEWS: If you had a self-executing provision in your Constitution, the court certainly would determine whether or not Rutgers' gym, or Rutgers' stadium, was used exclusively for educational purposes.

MR. EMERSON: Well, if you excluded all property owned by religious organizations, charitable or educational institutions, that would necessarily exclude the tax on Rutgers' stadium.

MR. MATTHEWS: I don't know how the courts might interpret that. I know how I would interpret it, but I am no longer the court.

MRS. RUTH C. STREETER: Mr. Matthews, I think, of course, there is general sympathy with what you are asking. We have, however, had some testimony before this Committee to the effect that in given instances, in particular municipalities, such a large concentration of this type of institution has taken place that those particular municipalities are bearing an undue share of exemption, whereas in other municipalities there are no tax-exempt institutions. Have you anything you could suggest that would meet this difficulty and in any way tend to equalize the exemption burden on municipalities?

MR. MATTHEWS: Do you, by any chance, have any city in mind? Did they give you any—

MRS. STREETER: New Brunswick, in particular, came to us.

MR. MATTHEWS: All right.

MRS. STREETER: Orange, also. New Brunswick, for instance,

stated that 30 per cent of its ratables were tax exempt, largely, of course, on account of Rutgers.

MR. MATTHEWS: I think we have a similar situation in Essex County where they have a quarrel over the park system—Frank Murray will be interested in this—and West Orange claims that a great deal of its area was dedicated to parks. The query comes, is the public welfare sufficiently necessitous of these things to warrant the burden? I don't know that I would have any ready answer for you. I would be loathe to think that New Brunswick wouldn't be proud of Rutgers, or that West Orange wouldn't be proud of its park. I don't want to duck the question, but I do say this—that in any community where you have a large concentration, as you put it, of educational, religious or charitable institutions, I should think that the community would be so civic-minded, if these institutions were doing their real work, that they wouldn't be unwilling to bear the extra burden.

MRS. STREETER: Well, they claim, sir, you see, that the institutions are serving large areas such as, for instance, the State as a whole; whereas, the municipality having to provide them with light and water and fire and police protection is expending its services to a group of people far beyond its own boundaries, and yet it is bearing the full cost. It's a difficult proposition, sir, but as you probably are aware, there has been a tendency to concentrate these institutions in certain municipalities which are now beginning to feel the burden of it.

MR. MATTHEWS: I don't think, if you'll pardon me, that the tendency is to concentrate in specific localities or communities. I think, rather, that they are in those communities and those localities because they are growths of pioneering in all those great services; and it seems with ill grace that the community comes now and says, "You pioneered for us in the days when we were little, and now because you have grown in our service, we leave you and say we must take care of our material interests, and these spiritualized interests must be second."

It's argumentative, but practically and realistically I suppose it's a burden. That is the only way I can answer it; it may not be satisfactory.

MR. EMERSON: Mr. Matthews, would you include cemeteries in the exempt group?

MR. MATTHEWS: Yes, I would include cemeteries in the exempt group. I often think of that myself as I grow older—and Senator Read will know that we are growing older. In these days, when the mortal remains of the human being are buried, one clings, as he grows older, to the little plot where he will be planted. There's a sort of a religious something about the cemetery, and the funds

really and truly, to bury us all, have a religious something about them. I think I would like to see that included. I realize, of course, that cemeteries are growing; there are some cemeteries that are perhaps entirely for profit—I don't know; I read about them in the newspaper, and while I like to read the newspapers, they have never either in their editorial columns or their news columns become a Bible for me, thank God. But I would include cemeteries.

CHAIRMAN: Any questions?

COMMITTEE MEMBER: During the 1944 campaign you will recall the great amount of public debate there was over the question of exemption, and the campaign waged against the Constitution which was then being proposed, on the exemption granted to veterans which would, by implication, prohibit the Legislature from continuing to grant the time-honored exemptions to religious, charitable and educational associations. It seems to me that unless the proposal which you are making is to be very carefully safeguarded, that exactly the same attack could be turned around the other way and might serve to defeat the Constitution which this Convention is expected to present to the public.

MR. MATTHEWS: I should be very glad to present your Committee for presentation at the Convention an Article that would safeguard you against any such fear.

COMMITTEE MEMBER: I am suggesting that that might be desirable.

MR. MATTHEWS: I will be very glad to do it.

CHAIRMAN: Any further questions?

MR. MATTHEWS: May I express my gratitude at the pleasure of appearing before you and at the joy of seeing Senator Read, my young colleague.

CHAIRMAN: May I ask the Secretary to call the next witness?

MR. RAFFERTY: I present Mr. John J. Crean, of Camden, a counsellor-at-law of that city who speaks on behalf of the Catholic Diocese of Camden.

MR. JOHN J. CREAN: Mr. Chairman and members of the Committee:

I merely desire to state that I endorse the views expressed by the Honorable John A. Matthews on behalf of the Archdiocese of Newark.

CHAIRMAN: Any questions you would like to ask Mr. Crean?

We are very glad to have you with us Mr. Crean, to get the opinions of Camden County. It will help the delegates from that county.

MR. CREAN: Thank you, Mr. Chairman and members of the Committee.

MR. RAFFERTY: I now present Mr. Augustine V. Gribbin,

of the City of Trenton, a counsellor-at-law of that city, speaking for the Catholic Diocese of Trenton.

MR. AUGUSTINE V. GRIBBIN: Mr. Chairman and members of this Committee:

As the Secretary announced, I appear for Bishop Griffin of the Diocese of Trenton, which embraces the central part of the State—that is, the counties of Mercer, Middlesex, Monmouth, Ocean, Burlington, Somerset, Hunterdon and Warren, comprising the Catholic population there—to endorse the view of Mr. Matthews that the property of religious, educational, charitable and cemetery associations not operated for profit, be exempt from taxation. Of course, by this we are not understood to be advocating that no other property be exempt, but I merely speak as the representative of the Catholic Diocese on this one particular topic.

CHAIRMAN: Any questions? . . . Thank you very much Mr. Gribbin.

MR. GRIBBIN: Thank you.

MR. RAFFERTY: Is Mr. John M. Nolan present?

Mr. Chairman and members of the Committee, I have a letter from Mr. Nolan which says that he wanted to be here this morning but was not sure he could be here. He would speak on behalf of the Catholic Diocese of Paterson, and in his letter he says, "In the event I cannot be present, I desire in this way to endorse the expressions of Judge Matthews to be made to the Committee on the 10th inst."

CHAIRMAN: Let it be noted on the record.

MR. RAFFERTY: The next gentleman to address the Committee is the Honorable Joseph H. Edgar, of New Brunswick, a counsellor-at-law of that city, who will speak for and on behalf of the American Legion Department of New Jersey. Mr. Edgar.

MR. JOSEPH H. EDGAR: Mr. Chairman and members of the Committee:

My address will be rather short. I understand that a few days ago other representatives of the American Legion appeared before the Committee on Rights and Privileges, and there expressed their theory of how the subject matter of veterans' privileges should be included in the Constitution. The thought has been suggested that this same theory should be brought to the attention of the Committee on Taxation. While I presume that there is some coordinating and planning arm, sometimes staff work falls down, and probably it is just as well that we appear before these various Committees who may have occasion to consider certain phases of veterans' privileges.

In the appearance before the Committee on Rights and Privileges, the American Legion Department of New Jersey made a suggestion somewhat as follows:

"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."

This seems to be in line with the question which came up earlier this morning of freedom of action by the Legislature. It would appear that there has been this time-honored privilege granted by the Legislature in the past of a tax exemption to ex-servicemen on personal or real property to the extent of \$500. Now, whether \$500 is enough or is too much is not a matter on which I am here before you today. The thought has been, and I think almost all of us will agree, that the fact that it is not in the Constitution has made it quite debatable as to whether the legislation itself is constitutional. The test was applied to exempt firemen, the lawyers will recall, and the courts decided that it was unconstitutional. If the test should come up, as far as veterans are concerned, I think that the decision would be the same. It would, therefore, be most helpful and practical to have it written in the basic law.

However, on the theory as presented to the Committee on Rights and Privileges, I desire, on behalf of the American Legion Department of New Jersey, to present to the Committee on Taxation and Finance the same general opinion, and with the request that so far as the time-honored tax exemption for veterans is concerned, that it be recognized and included in the Constitution so that the Legislature shall decide whether and what that tax exemption shall be. In other words, simply again granting to the Legislature the power to grant the preferences, privileges and exemptions. It is possible that the inclusion of this provision in the Article, shall we say, on the Bill of Rights, might not be construed as extending to the provision for tax exemption, inasmuch as there will be, I understand, a specific Tax Article. So that is the reason why we appear here again to bring this matter up to you.

As I sat in the rear of the room and listened to the discussion of tax exemption of property, the thought occurred to me—and while I have not been authorized to bring it before the Committee—the thought occurred to me that possibly the problem of tax exemption on veterans' clubhouses might also be considered in the same manner. That, today, is granted by an act of the Legislature in the same manner as the religious, charitable and educational institutions are granted certain exemptions. Though I merely speak in behalf of the veterans of New Jersey, that problem will also probably come before the Committee in considering the question of exemptions, although I have not been asked officially to present that particular phase.

COMMITTEE MEMBER: Mr. Edgar, I presume you're familiar with the proposed Constitution of 1944 in which there was a proviso

to the tax clause which allowed the Legislature to exempt veterans. Because of the feeling that the inclusion of that would exclude the others, there was a great deal of opposition to that proposal, and that's the reason why, I understand, Judge Matthews makes this proposal now. Now, is it your feeling that the Article which you presented to the Bill of Rights Committee, if put in the Constitution, would cover, without a special addition to the tax clause?

MR. EDGAR: Well, unfortunately I was overseas when the last proposed Constitution was being debated, and I didn't have the opportunity to study it or listen to the arguments *pro* and *con*. I do feel that we should bring it to the attention of the Committee on Taxation and Finance in this same Article, for them to consider in connection with any coordination that might be necessary in connection with the consideration by the Committee on Rights and Privileges. I'm sorry I can't give you a better answer than that, but I don't care to speak up on a subject that I wasn't familiar with at that time.

COMMITTEE MEMBER: May I ask a question on this subject of exemption? There is a great sentimental appeal in the subject matter of your testimony and statements today, but I am wondering if the veterans have made a survey on an actuarial basis as to what the write-off would be insofar as the exemptions are concerned, giving consideration to the figures which are in the air, and some of which are reduced to statements addressed to the delegates, as to an exemption of \$2,500 for each veteran?

MR. EDGAR: I am not here to speak on any amount of exemption, or to ask that it even be included in the Constitution. You will recall that I mentioned the fact that our theory seems to be, as presented before the Rights and Privileges Committee, that we make sure that the Legislature has the constitutional right to grant certain exemptions and privileges. Now, on the question of how much would be involved, it seems to me that would be a question for the Legislature to decide, I mean to consider, in their debate in the enactment of the legislation. If there is any way that the American Legion can be of assistance to this Committee or any other Committee of this Convention by obtaining statistical information, we will be glad to submit it.

MR. DWYER: I would greatly appreciate that, sir, because I happen to be a veteran of World War I, and I'm a member of the American Legion, and I know of the debate which is going on in veteran circles. But I know that the veterans are primarily patriotic organizations devoted to preserving the integrity of our country from every danger conceivable. We are assumed to be the leaders by reason of the sacrifices that we can number among our comrades—to be the No. 1 factor in advancing that which is best for all of the

people of this State and of this Nation. That is our presumed position, and we would safeguard the interest of all the people even if we were obliged to forego some of the statements that have been made as to privileges, if it were not in the common good. I assume that's the philosophy of most of the veterans' organizations.

I think undoubtedly that's true. I'm a great believer in certain privileges for veterans, particularly to assist them by reason of the losses that they have suffered, if only in the matter of time and of being away and out of circulation, as it were—the setbacks that they have suffered by reason of their absence from the country, or absence from their own occupation and work. Of course, undoubtedly, when it comes to disabled veterans, the responsibility is even greater. That is the thought I would like to have emphasized—our continuing obligation to the disabled veteran. As a matter of preference, we owe him everything. The returning veteran has come back into our society, which he fought to preserve, intact as he left the shores, and I am sure that he would not, in any way sponsor or advocate the privilege that would be in any way discriminatory insofar as the traditions of his community are concerned, if it injures the general body of citizens.

I am talking now, realistically, on what is called pecuniary cost, because pecuniary cost sometimes, in government, can be just as destructive of our society as an atomic bomb; and if we get some coordinated figures, actual results, with the assistance of your American Legion, that will reduce this thing to realistic calculations of what it would mean to our society here in the State. We would be under great obligation to you and your comrades for bringing that information to us.

MR. EDGAR: I would like to repeat in conclusion, unless there are any more questions to be asked, you will understand that the proposition which I have presented to this Committee is not for your decision—what shall be made or what shall be done—but rather to make sure that the Legislature shall not be prohibited from granting the preferences and privileges and exemptions that they may see fit.

MR. DWYER: Well, I have a very strong feeling for our form of government and an implicit confidence in our elected representatives, and I wouldn't want in any way to restrict them in their attitude towards the people of the State in any division that they might have, organized or unorganized.

CHAIRMAN: Mr. Edgar, just following what Mr. Dwyer said, there are two matters which I think I would like to have, and perhaps the Committee. One is the approximate number of those veterans in the State of New Jersey, and the other number of veterans

who are property owners and, with the \$500 exemption we take today, how much that might mean.

COMMITTEE MEMBER: How many of them are eligible, in other words, for the \$500 exemption?

MR. EDGAR: Well, I am told today that we have in New Jersey about 500,000 veterans. I doubt if there is any veteran, with the exception of a very few, who does not possess at least \$500 either in real or personal property.

MRS. STREETER: Mr. Chairman, I asked the research department upstairs before the meeting today if they could give us any figures on that. Of course, they couldn't on the amount of property the veterans own, but they got from the Division of Veterans' Services the following figures: probably about 3,500 Spanish War Veterans; 119,600 World War I veterans; 550,350 World War II veterans. Now, of course, there could be some duplicates between people who served in both World War I and II, but probably not very many. That gives you some idea—that's approximately 670,000 out of a total population of New Jersey of 4,167,000.

COMMITTEE MEMBER: Mrs. Streeter, Mr. Edgar is in the category you just mentioned. Mr. Edgar has served both in World War I and World War II and, I might add, another war which he was in—he was a member of the Legislature for several years.

MRS. STREETER: That's very much to Mr. Edgar's credit, and I know there are some others; but I doubt if they are in a very great number. Do you think, Mr. Edgar, that there would be more than a few thousand duplicates there?

MR. EDGAR: Well, there are not many of what we call "re-treads."

MRS. STREETER: Of course, I belong in that group by age, but I was busy, otherwise occupied, in the first World War.

CHAIRMAN: Dean Cullimore.

MR. CULLIMORE: I want to say just a word to assure Mr. Edgar that this Committee is, I think, very sensitive to the matter which he presents and is of the opinion that everything should be done which can be done, as has been pointed out, from the standpoint of the whole people, all the people of the State. That's going to be a very difficult proposition to arrive at. Our sympathies may, perhaps, extend very definitely to one group, and yet, it seems to me, that our whole loyalty should go to the whole group, including the veterans. That is a decision which I think this Committee, perhaps, will have to meet, and I am sure you can assure Mr. Edgar that we will meet it with consideration and, perhaps, try it with consideration.

MR. EDGAR: Thank you, Mr. Chairman.

COMMITTEE MEMBER: Do you think there should be a time

limit as to how long this exemption should be extended? Five years, ten years from the time of the—

MR. EDGAR: Well, you see our proposition is that if the Legislature is granted the power, then they can decide that as time goes on.

COMMITTEE MEMBER: Couldn't that be in the Constitution, that this could extend only ten years after a particular—

MR. EDGAR: Well, I don't think it's fair and I don't think we're in a position to determine when or how long such privileges should be granted. I think that the Legislature is the best way. In the future, unless you want to bring it up 20 years from now, as has been suggested, by referring the constitutional matters to the people again; but it occurs to me that we are drawing a basic document today and to simply have in there that there shall be no restriction on the Legislature, then we can rely on the freedom of action of the Legislature to meet conditions as they are from year to year. Certainly, I would hope that my appearance here would not produce a clause in the Constitution preventing the Legislature from granting them if they saw fit.

COMMITTEE MEMBER: I understood you to advance, as one reason for your proposal, a doubt as to whether the exemptions now given by the statutes of the State are constitutional.

MR. EDGAR: Speaking as a lawyer, there has been the suggestion, and there are court decisions which indicate, that the present tax exemptions granted to veterans might not stand the test of court decision.

COMMITTEE MEMBER: What would you think of a provision to go in the new Constitution, the effect of which would be to give unquestioned sanction to the exemption already existing? I think that one thing which gives pause to citizens who otherwise are very sympathetic towards exemption for veterans, is the fact that those who are veterans of the various wars in which our country has been engaged now constitute such a very high percentage of the population; that is, if we take the figure of 670,000 which Mrs. Streeter just quoted as against a population of 4,200,000. That in itself, is not quite a fair method of computation, because the veteran represents not only himself, but he represents his own little family; and when the families are included, they loom as an even larger percentage of the population than simply contrasting the veterans themselves against the total population. If we grant complete authority to the Legislature to grant any type of exemption to that large segment of society, it raises problems which have not been present in exemptions granted in the past.

MR. EDGAR: Well, I don't think you need to single out the veterans from any other group. You might take, if you were dis-

cussing the question of a religious problem, everybody who goes to church, and that would comprise practically all or maybe 95 percent or 98 percent of the citizens of New Jersey. I don't think that the issue or the question—

COMMITTEE MEMBER: Well, the question is a little bit different, if I may be allowed to interrupt, because the proposal which was just presented to this Committee by Mr. Matthews was a proposal to embed certain exemptions in the Constitution—exemptions of a type which they admit the Legislature does have full authority to grant now. Your proposal, as I understand it, is based upon your doubt as to the authority of the Legislature to grant the exemption.

COMMITTEE MEMBER: Well, it isn't based on the doubt; it's based on the theory that the Legislature has granted it in the past and the American Legion, instead of coming to this Committee and saying, "Please write into the Constitution an outright exemption," simply asks the Committee, "Will you please consider writing in the Constitution the right of the Legislature to grant the exemption?"—feeling quite confident that once that was written into the Constitution, the Legislature would consider it as an implied mandate to grant the exemption.

MR. EDGAR: That may be the opinion of some but, of course, the philosophy under which I appear here is that it's to grant freedom to the Legislature, as has been expressed by others on other subject matters. I mean, this is my personal viewpoint, sir. As a lawyer I can see that we can end up with a Constitution here, if everybody's desires are written in, which will be as large as our *Compiled Statutes*.

COMMITTEE MEMBER: And would probably be rejected by the people by an overwhelming vote.

MR. EDGAR: Well, I have nothing to say about that.

COMMITTEE MEMBER: That's the apprehension that many would have.

MR. EDGAR: And that's probably the philosophy the American Legion has adopted in their request before the Rights and Privileges Committee. I'm not sure. They're here and I'm here—

COMMITTEE MEMBER: An exemption, or an authorization for exemption such as you suggest, was incorporated in the 1944 constitutional proposal and was one of the most, may I say, shot at provisions of that proposal, and probably had a large part of the responsibility for the defeat of that Constitution.

MR. EDGAR: Was it the exemption provision itself, or the authorization?

COMMITTEE MEMBER: It was the authorization.

COMMITTEE MEMBER: As a matter of fact, it was the fear that if we put that in, all others now exempt would be excluded.

It was the exclusion that beat it, not the fact that they didn't want to exempt a veteran.

COMMITTEE MEMBER: That's right. Perhaps it could be more artistically phrased so as to avoid the inference which was then made, but the charge that was made was that the inclusion of that authorization constituted an implied denial of authority to the Legislature to make other exemptions, such as to firemen or charitable institutions or any others that might appeal.

MR. EDGAR: I'm sorry that I missed the argument that went on that year. I would like to have been in it. I can see that the Committee here will naturally keep in the back of their minds what went on in 1944. However, I hardly would think that the Committee would make its decision based on what happened in 1944. By the same token, I don't think it appropriate for me to suggest that the —I do recall that the proposed Constitution was defeated by a relatively small vote and, of course, this very same group of veterans (you've mentioned half a million) were not here. A few of them were voting. I didn't have the opportunity of voting myself, and I doubt if ten per cent of them did. I am not sure what the statistics are on veterans' voting, but I mean if you are considering in your debate the practicality of whether, what or where you might be vulnerable in your Constitution, I hardly think it fair to lay the blame on what may be provided for veterans. On the other hand, I think that in this day and age, and at least for this time, it might assist the Constitution in being adopted because the boys are back now. However, I am not suggesting that as a reason, but only because you have brought up the thought.

MRS. STREETER: There's one question I would like to ask Mr. Edgar to which I think I know the answer already, but I would just like it for the record. We received a communication from the New Jersey State Commanders' Conference on the Constitutional Revision Convention which may have representatives here today. They ask not only for certain preferences and exemptions, but for some very specific ones. I notice that the American Legion was not listed among the organizations listed in that Commanders' Conference and, as I understand it, you do not go along with the idea of definite exemptions being written into the Constitution.

MR. EDGAR: Mrs. Streeter, we are not at odds; no veterans' group is at odds with any other veterans' group. I think probably the reason that the American Legion, which is the largest veterans' organization in New Jersey, has appeared through its representatives as an individual organization, is because of the very philosophy which I have submitted to you in our request. If the other veterans' groups see fit to make specific requests I, of course, have no quarrel with them. I'm only presenting the request of the American Legion,

and it's probably a difference of, shall I say, philosophy as to how to handle the matter.

COMMITTEE MEMBER: I understand, Mr. Edgar, that your suggestion is not mandatory, but permissive, so that the Legislature may continue what they now do.

MR. EDGAR: Not even *may* continue—that they may have the power to do whatever, in the matter of preferences, privileges and exemptions—

COMMITTEE MEMBER: It, of course, would include civil service rights, and all those things.

MR. EDGAR: Well, those matters, of course, we have discussed before the Committee on Rights and Privileges.

COMMITTEE MEMBER: But your clause there might cover everything in so far as veterans are concerned. I am not sure.

MR. EDGAR: I had thought possibly so, but I know there are some lawyers who believe that if there is a separate tax clause in the Constitution, what is now contained therein will not give the Legislature the authority and may exclude them. Of course, that is a matter for you constitutional experts, shall I say? I'm sure you're becoming—

COMMITTEE MEMBER: You as a witness before our group this morning might be informed that the previous speaker, Mrs. Streeter, can probably claim the title of Colonel, indicating that she served as a veteran herself in World War II.

MR. EDGAR: I am familiar with that.

COMMITTEE MEMBER: Let's match ranks here now, Joe. What was your designation?

MR. EDGAR: Well, I—

CHAIRMAN: Off the record.

MR. EDGAR: I am glad to address Mrs. Streeter as a fellow Colonel.

(Laughter)

MRS. STREETER: Thank you, Colonel. One of my sons was a sergeant, and he assures me that the sergeants were really the backbone of the Army.

MR. EDGAR: How true, how true!

CHAIRMAN: Anything further to ask of Mr. Edgar? . . . Thank you very much, Mr. Edgar.

MR. RAFFERTY: I present Honorable Alexander F. Ormsby, of Jersey City, a counsellor-at-law in that city, a former judge of the Hudson County Court of Common Pleas, Dean and Vice-President of the John Marshall College of Law located in Jersey City, who speaks for the New Jersey State Commanders' Conference on Constitutional Revision Convention, embracing these organizations: Army and Navy Union, U.S.A., Catholic War Veterans, Disabled

American Veterans, Jewish War Veterans, Marine Corps League, United Spanish War Veterans, and the Veterans of Foreign Wars of the United States. Mr. Ormsby.

MR. ALEXANDER F. ORMSBY: Mr. Chairman and members of the Committee:

I was very much interested in hearing the discussion about the Army and the Marines. I am reminded of a little story they tell about some of our servicemen when they were doing duty in Arlington Cemetery at the Tomb of the Unknown Soldier. As the story goes, the sailor was guarding one side of the tomb and the soldier the other. While they were marching back and forth the soldier said, "You know who is in the tomb, don't you, sailor?" The sailor replied, "Yes, there's a sailor in the tomb." The Army man said, "No, it's a soldier that is in the tomb." By coincidence, a hustling Marine came along. Addressing the Army man and the sailor he said, "What are you two fellows arguing about?" The Marine was told and he said, "Well, both of you are wrong—it is a Marine that is in the tomb." Momentarily the sailor looked up and said, "Well, whoever heard of an unknown Marine?"

(Laughter)

If Col. Ruth Streeter, the head of the Women Marines, who was present a few minutes ago, was here now, I am sure she would appreciate the above story.

I came here today representing the various organizations I've outlined. I was glad to hear Colonel Edgar make the following inquiry, "Was the Legion in our Conference?" Commander McSpirit of the Disabled Veterans' organization invited the Legion to send a representative, but because of the policy of the Legion in handling such matters by itself, no one was present. While the American Legion, individually, perhaps has the largest membership in our State, yet I think the combined membership of all of the organizations, as outlined above, is greater in number than the American Legion. The main point is that we are all veterans and we are striving to arrive at some understanding that will be agreeable to the best interests and welfare of our people.

Our proposals were prepared in petition form and enumerated. We are concerned at this meeting with Proposal No. 1, which was expressed as follows:

"We wish to secure proper legal exemption as to both real and personal property in a satisfactory amount and that such protection cannot be changed except by constitutional amendment. We recommend that the amount of \$2,500 be granted to a veteran and that such exemption may either apply to real or personal property."

That is the extent of my authority. From a legal standpoint, as Judge Rafferty and several of the lawyers I see here know—I

wouldn't expect the Colonel here to go into the intricacies of law, but even at that I'd say that she is very well qualified from a legal standpoint from any angle—*Revised Statutes* 54:4-3.12 is the law that I am pretty sure Judge Rafferty is very well acquainted with, and the Senator here and some of you other members. The exemption of the property of firemen and veterans is presently \$500.

I concur and agree with Colonel Edgar that if the present law exempting veterans in the amount of \$500 was attacked in our courts, perhaps the present law would be declared unconstitutional. I recommend that our proposal be adopted in the new Constitution so that the veterans could not be deprived of their exemption in whatever amount the Constitutional Convention decreed.

There are over a half a million men and women in the State of New Jersey who are now back home from the war and are striving to establish their homes and their businesses. I think they should be told in certain terms what exemption they may have. Replying to the question about how long a period, I recommend no limitation of time, because you never know what time a veteran may have an opportunity to start and acquire personal property.

The present exemption of \$500 was set at a time when the cost of living was lower and the integrity of our American dollar covered more items. I feel that \$2,500 placed in our Constitution would take care of the veterans for a long period of time and it will not be necessary for veterans to besiege the Legislatures year after year to increase the amount of the exemption. It would be a sum certain, and everybody would understand where they were at. It's for just that reason that this amount should be embodied in the Constitution, so that our veterans are protected.

Now, I think one of the delegates asked about the amount—how much will it cost the State? That would have to be ascertained by the Committee.

Under the present law the exemption is on a very uncertain basis because a court might hold the present law unconstitutional if the law was attacked. Now, I don't think that the veterans should have that sword of Damocles hanging over their heads. An exemption written into our Constitution would remove this sword of Damocles and greatly encourage the veterans in the acquisition of both personal and real property.

In conclusion, on behalf of the organizations I represent, I most respectfully request that my proposal be inserted in the new Constitution. I thank you for your kind reception of me as a representative of the various organizations.

CHAIRMAN: Any questions? Mrs. Streeter.

MRS. STREETER: I'm always glad to see a fellow Marine, and particularly Judge Ormsby. Of course, as you probably all know,

the Marines are a group of rugged individualists and they don't always necessarily agree, even with each other, 100 per cent, but they're always good friends anyhow.

MR. ORMSBY: You bet. *Semper Fidelis*, Colonel.

CHAIRMAN: I suggest that a little later Judge Ormsby tell Colonel Streeter the story that he told in her absence.

MRS. STREETER: I'm sorry; did I miss something especially rich? I went to speak to Judge Hand for a minute, but that was all.

MR. ORMSBY: Colonel, I'll tell you that one specially.

CHAIRMAN: Quite a parlor story; it's all right!

My quick figuring here shows that \$2,500 times 570,000 is about a billion and a half. Am I right on that?

MR. ORMSBY: Approximately.

CHAIRMAN: Well, \$1,425,000,000.

MR. ORMSBY: Unless you are assuming, Senator, that everybody has \$2,500.

CHAIRMAN: Well, that's the question I asked of Colonel Edgar. How many have you in the State? That has been answered. And how many of them do you think would be in the exempt class—I mean entitled to the exemption?

MR. ORMSBY: I wouldn't venture to say, Senator. I don't know.

CHAIRMAN: Then I would have to ask Comptroller Zink what the total ratables are in New Jersey. I used to know that years ago, but I don't know it now.

MRS. STREETER: Judge Ormsby, has it occurred to you that there is a certain injustice as between veterans in this matter, because if the veteran happens to have a house or some personal property, he gets an exemption, whereas a good many veterans who don't have that property don't benefit?

MR. ORMSBY: That is true, Colonel, but I don't think that the ambitious veteran who is striving to establish his home and his family ought to be penalized either. It works the other way around; but as the Irishman says, "It all depends upon the point of view."

CHAIRMAN: Any further questions? Mr. Lightner.

MR. LIGHTNER: When you lend emphasis to the veteran who is striving to get himself established, that comes back to the question which has already been suggested, as to whether a time limit might be a desirable thing if any such provision as you have suggested were to be embodied in the Constitution. I am sure that we would be very glad to have a further elaboration of your views on that subject.

If you take a \$2,500 exemption and you take a veteran list of 670,000, and you assume that the exemption applies to all of those veterans, you would have the staggering total of some billion, six

hundred seventy-five million dollars worth of property taken out from the tax rolls every year. And it is not only a matter of that property being taken out, for in so far as veterans do not have property sufficient in amount to give them the \$2,500 exemption—either because they live in rented homes or apartments or because they do not happen to have that much of the world's goods standing in the name of the individual veteran—in so far as that condition exists, the lifting of this amount of property out of the tax rolls undoubtedly will force the State to raise a corresponding amount of money by other types of taxation. The veteran who does not receive the benefit of this exemption would be paying, whether he were aware of it or not, the other types of taxation, imposed in order to raise the necessary money to operate the government.

I am calling attention to those, not by way of opposition, but because the Committee wants light on what this proposal really is. Is it a proposal to carry on that kind of exemption indefinitely, or is it a proposal coupled with the thought of enabling a fellow to get started, and if so, what kind of limitation is suggested by the proponents of the idea?

MR. ORMSBY: Well, I would say that the point made by Colonel Streeter and you, Mr. Lightner—both points are very excellent points. I do not think that all of this tax exemption amount may come at once. As we go along in time, some of these veterans won't have any money, perhaps, and then again, they will; but when they come into it, the exemption will be there for them, if and when their chance comes.

MR. LIGHTNER: I have called your attention to the fact that while such veterans are not enjoying this exemption, they will, whether they realize it or not, be paying in other forms of taxation the money that is needed by the State to operate and which will have to be raised in larger volumes because of the existence of this exemption.

MR. ORMSBY: That's true, I understood your—

MR. LIGHTNER: So that the very veteran whom you think will be placing property on the exempt roll, will be paying larger taxes than would otherwise be collected from him in some other form. And that is not giving him an exemption during the time he is trying to get this property together. It is putting a further burden on him.

MR. ORMSBY: I said I understood your viewpoint and, of course, as I was proceeding to answer you, you broke in there and, of course, my train of thought was broken up.

I do want to say this. Many of these boys have been away for two, three and four years, and in my book, too, we may run across the veteran you said would have to pay in other directions. Those

men whom you place in that group are men who, perhaps, wouldn't be able to pay anything anyway. The average veteran that wants, or desires, this exemption is a veteran who is willing to make a start, who is willing to get there, and if it is the wish of this body that you're only going to make that relief temporary and not permanent, that, of course, is your decision to make. But if you want to know the consensus of the veterans I have talked with, they feel that it would be beneficial for all veterans to have that exemption. There are many veterans who perhaps are unable to get a piece of real property, but they may be in business. At the same time, those are the same fellows who would want to see their comrades get some consideration, and then, when their turn comes along, when they get a piece of property, they likewise enjoy an exemption.

As I explained earlier here, the present law is a creation of the Legislature. Constitutionally, it might be thrown out tomorrow if it were attacked.

Many citizens were able to make quite some money while a lot of our boys were away these years. As I pointed out yesterday to another Committee, millions of dollars are going to the other side, even to our enemies, and millions of pounds of food are going to the other side. I personally feel that the veterans here should get the fullest consideration and that such consideration should be guaranteed in the Constitution.

MR. LIGHTNER: I wouldn't want you to understand my question as indicating a prejudice, either for or against your proposal. But the proposal is one which is set forth in figures which, due to the size of the proposed exemption and the number of veterans, are so large that I feel that the Committee is entitled to all the assistance it can get from the proponents as to how problems raised by such an exemption will be solved, and whether the exemption is really fair to the veteran whose economic status is such that he is paying indirect taxes but is not the owner of property and thus benefiting from the exemption.

MR. ORMSBY: May I suggest this? Has there been any abuse of this present law, from your experience from the last war, do you think?

MR. LIGHTNER: I happen to be a veteran myself, and have plenty of veterans in my family, and I'm asking my questions neither to defend the present law nor to attack it, or to defend or to attack the proposed exemption. I am simply asking you for this information because you are appearing before this Committee on behalf of very large and well known organizations, and I don't care to get into the position of expressing my own views or debating the subject.

MR. ORMSBY: I think I understand your point, but I wanted

to bring out as far as I know, Mr. Delegate, that I haven't heard of any abuses of this present law as it operates from the last war. Of course, we had about 118,000 in that last war. Now, we're considerably higher. Of course, the number has increased.

MR. DWYER: Judge Ormsby, I never was aware of it, and wrote out my check, but I think that both the Convention and the people of the State of New Jersey are getting a vast fund of information. We are all enjoying a great educational experience, and I am wondering if part of the education, in so far as the groups which you represent are concerned, bears testimony to the fact of what has established before this Convention—that under present-day conditions in the State of New Jersey the cost of administration is going to exceed the income of the State by about fifty millions of dollars. And the problem has been addressed to this group as to how we might devise some plan to make up an indicated deficit of \$50,000,000 in the ordinary operation of the State, without the super-imposition of any further tax obligation on all of our fellowmen in the State of New Jersey.

Now, we want to rationalize the thing, not forgetting that there is in the plea of the veteran great merit, a great sentimental appeal. You and I, having known each other for so many years, know from our respective positions in our community the attitudes towards the underprivileged and those who should be the beneficiaries of society's gratitude; but would this proposal that you are making have an impact upon the State that would destroy the very purpose of it? That's the consideration. When you go back into your conference with the commanders, as a patriot—and I know you to be one—you will sit down and deal with the figures developed in this discussion this morning and get some actuarial deductions from that to see whether it is of benefit to the veteran in its completeness as it appears in your appeal, or whether it might be discriminatory against a large body of veterans. That's what we're trying to work out.

MR. ORMSBY: As Mr. Lightner said, the veteran himself—

MR. DWYER: Yes, let's get the veteran thoroughly oriented to his relationship to our society as a whole, the debt that might be placed upon his children and the future children of his own issue, and let's see how that would affect, from a purely patriotic standpoint—because veterans are very keenly allied to their patriotic obligations to their State and their Nation—let's see whether we would be doing an injustice to any of these people of the State of New Jersey and of the United States. We have a colossal program of expenditure before us in this period of readjustment. We have not only that, but you touched upon a subject that would lead to a round table discussion that would go on and on into the night—

our attitude toward humanity in sending vast supplies and monies abroad, which are a burden upon every veteran in this country today in so far as his tax dollar is taken from his pocket to finance our great attitude of sympathy for suffering all over the world.

So, we are getting to a point where, if we consider general welfare, we might be living way beyond our potential income, and we may resolve ourselves into a country of reduced standards of living. I am sure that our veterans fought for not only the maintenance of a high standard in the United States, but a guarantee that future generations of Americans would indeed be secure in their philosophy of life. The only way that you can destroy a society is by overtaxing it, because the power to tax is still the power to destroy; and we must give, as veterans—you and I—a general consideration to all the factors, since it affects not only ourselves as veterans, but our fellowmen, our children and our grandchildren. You understand my point of deliberating on this, I hope?

MR. ORMSBY: I appreciate, Mr. Dwyer, your remarks, and particularly Mr. Lightner's. I want to say that at our conference the point was taken up about the financial credit of our State. I think Judge Rafferty was here yesterday when I spoke. I said that it was the feeling of our men that we didn't want anything from our State if it would destroy the financial structure.

CHAIRMAN: Judge Ormsby, suppose 40 per cent or 50 per cent of the boys in the State could take advantage of this relief that we're offering. Now then, we are going to find, as it has been said here, additional money from other people who are renting homes or business houses, who are selling many types of products back to the other 50 per cent. Are they going to pay an additional tax, in the way of rents or because of higher costs of the commodities they buy; and when it is balanced out, which group is going to benefit to the greatest advantage? That's a point which must be taken into consideration, because if a man has to pay \$5 more per month for his rent and the other fellow is going to benefit to a reasonable degree on a \$2,500 exemption, it seems to me that penalizing one in order to benefit the other is just a matter of what percentage, in either group, are going to have the advantage.

MR. ORMSBY: And they're both veterans?

CHAIRMAN: And they're both veterans.

MR. ORMSBY: Yes, I understand; in fact, I think it is almost a *per curiam* viewpoint between Mr. Dwyer and—

MR. LIGHTNER: It isn't an expression of a viewpoint; it's a troublesome problem.

MR. ORMSBY: I say, then, you're in accord with this troublesome problem.

MR. LIGHTNER: There is a problem.

MR. ORMSBY: And we are, too. We are just as concerned with this problem as you are. This is America here; we are trying to sit down and do our best to come to some conclusion that will be beneficial to the general welfare of all of us. I think I said that at the outset. I think we all understand our viewpoints. Now the *modus operandi*—I wouldn't propose that I could prescribe right now, in this instance, that *modus operandi*, that remedy, but I assure you that all the members of our organizations feel, I think, just the way I feel. I've interpreted their feelings correctly. We are here to make a greater New Jersey, a greater United States of America.

CHAIRMAN: Dean Cullimore has a question.

MR. CULLIMORE: I just want to talk—

MR. ORMSBY: Oh, as one Dean to another.

MR. CULLIMORE: Judge, our little different angle perhaps stems into the same thing ultimately; but my feeling is, after a great deal of contact with many of these veterans, literally tens of thousands personally over the last World War and in this one, that we need the veterans' help in this community—I'm speaking of the State and the Nation. I don't think we can get along without the veterans' help. These fellows who have been over are the very flower of the country, and if they come over here and we fail to integrate them with the body politic, to make them one of us, with the responsibilities and the burdens which we have, we are putting something on those boys which is morally insupportable. I think, as I see the average veteran, that if he understands that, he is very anxious to take care of that sort of thing with us and perhaps for us, in a helpful sort of way.

I, for one, speaking rather broadly, feel that from the standpoint of the self-respecting veteran, his willingness to help, and our great need for him, that he should consider that when we deal with a problem like this, we are not only considering it from the standpoint of a veteran, but the standpoint of the veteran as a citizen of the State of New Jersey. Because, after all, we are all one. I am not sure that most of us, whether we wore a uniform or not, are not in some way veterans. If we haven't suffered—some of us out of uniform perhaps may have suffered more than any, and vice versa—but the thing is a common problem, and a thing which cannot be separated, it seems to me, into veterans and non-veterans as such, but which must be considered from the broadest possible standpoint. That's the thing to which I think this Committee will address itself.

MR. ORMSBY: I want you to know that we all feel that every member on this Committee here is trying to do just the kind of a job that you are doing. I think you have been patient, kind and very considerate, and I know my own personal observation is that

you're going to do the best possible thing for all concerned. I can't say any more than that. I wouldn't want to say any more; but I will say again, if there are no more questions—I'd be glad to answer any more, if you have any, to the best of my ability—and if there are none, I shall thank you and bid you good day.

CHAIRMAN: We are very glad to have you, Judge Ormsby. I will just say, in parting, that I think you will find the attitude of this Committee is that we're sympathetic with the veteran, but we don't want to be an Indian-giver.

MR. ORMSBY: That was just the point, one of the points, which I had on this \$500 exemption. I was fearful that one day somebody would attack the law and the State would be in the position of an Indian-giver. They gave the \$500 on a string and took it away from them; and that's just one of the points behind my heart in this matter.

COMMITTEE MEMBER: I agree with you on the unconstitutionality, but I would hate to be the man to stick out his chin and try to stop it.

COMMITTEE MEMBER: I don't think anybody ever would. He'd have to move from Jersey.

MR. ORMSBY: I'm going to report to my committee now.

MR. RAFFERTY: The Committee asked me to suggest to the speakers who will follow, without in any way attempting to limit or restrict them, because we wouldn't do that all—but if they possibly can do so, not to deal in repetitious statements. That is to say, the things already said by Mr. Edgar and Mr. Ormsby need not be restated unless the witness feels that for emphasis of a particular point, he should. The Committee is anxious to hear everyone, but at the same time we are limited by the statute creating the Convention to a certain time, and we must get through our work. I am sure the succeeding speakers will bear in mind this suggestion and will not feel that we are, in any way, trying to limit them.

The next speaker, Mr. Chairman and members of the Committee, is Mr. William H. Falcey, speaking for the State Chairman of the American Veterans' Committee—or rather he is the State Chairman, speaking for the American Veterans' Committee.

MR. WILLIAM H. FALCEY: Mr. Chairman, Committee, ladies and gentlemen:

I am going to take under advisement Judge Rafferty's words and be as brief as possible.

I have a statement here, and I am sure that after hearing Mr. Dwyer's remarks, that I would like to hand him an application for the American Veterans' Committee.

We appreciate the opportunity to be here and to express our views on veterans' affairs. The AVC feels that the veteran will prosper

only to the extent that the State as a whole prospers. It is in this interest of the State that the veteran becomes once again a citizen of his community in the shortest time possible.

As the largest organization of World War II veterans in New Jersey, we have as our motto "Citizens first, veterans second." Our purpose is to assist veterans by helping them become citizens of their community. In short, we believe that the veteran should be returned as quickly as possible to the position he would have had in civilian life had not his career been interrupted by military service.

We, therefore, offer the following recommendation for the consideration of the Convention delegates: That World War II veterans be granted a tax exemption of \$500 on personal and real property for a period of ten years after their honorable discharge from the service, and that no time limitation be set on the exemption for disabled veterans. If the Convention decides that such a recommendation is a legislative rather than a constitutional matter, we recommend that the final draft of the Constitution include provisions allowing the passage of such legislation.

In making the above recommendation on veterans' exemptions, the American Veterans' Committee is not overlooking the fact that the No. 1 need of World War II veterans, and other citizens of this State, is housing. In considering the overall picture of veterans' affairs in the State of New Jersey, we feel that above all the housing question should have first consideration.

In conclusion, we request your consideration of the approach of the AVC to veterans' affairs as the one which will result in the greatest benefits to veterans and other citizens of the State.

COMMITTEE MEMBER: Mr. Falcey, the question is raised, is your organization the same as the organization known as the "AMVETS?"

MR. FALCEY: It is not, sir. The American Veterans' Committee is a separate and apart World War II organization. The American Veterans of World War II is the AMVETS.

COMMITTEE MEMBER: I think, in your statement, your greatest need seems to me is the housing one, and yet I doubt if we can handle that by the Constitution.

MR. FALCEY: No, but I felt that in giving that due emphasis, that in considering anything, we as veterans feel that handouts are not the exclusive concern of the veterans. There are salient needs as far as the veteran is concerned; and we feel that housing is paramount, as are jobs and peace. Possibly that doesn't have any application as far as this Committee is concerned, but I just thought we would voice those opinions.

Are there any questions? I think it's clearly stated, and you all have statements.

COMMITTEE MEMBER: What is the American Veterans' Committee?

MR. FALCEY: The American Veterans' Committee was founded by a group of GI's who corresponded with each other during the war, trying to arrive at the best way to attack our problems of civilian life. They felt that there were many veterans within this World War II group who could take the stand of being a citizen first and a veteran second. Charles G. Bolte was our past national commander, and he was a veteran who really organized the American Veterans' Committee, and he was in on the groundwork. He was a man who was at Dartmouth College and saw the cloud of war coming over, and the threat of the totalitarian states against the democracies, and he joined the English Army when he graduated from Dartmouth. He lost a leg at El Alemein. There were five of them with him at the time, two of them died in action and another man lost an arm. The man who remained when the Americans came into the war joined the American forces, and that was his intention throughout his whole life.

The American Veterans' Committee has been set up on a strictly non-partisan basis. We have within our national planning committee such men as Orin Root, Jr., who organized the clubs for Willkie, if you recall, and we have Franklin Delano Roosevelt, whom you more than likely know, too.

COMMITTEE MEMBER: Who knocked those clubs out?

MR. FALCEY: Yes. We are trying to take the approach that there shouldn't be any unfair division between the veteran and the non-veteran. The people who are crying most for 100 percentism are, as far as veterans are concerned, doing the veteran more harm than good. They are in the hunger marches and the motorcades of the extremists. If we are going to approach these things, we must on a sound basis. I think the statistics, as has been explained, of \$1,-600,000,000 is quite a sum. I am not a statistician; I don't presume to have all the answers regarding that. Is that satisfactory for you, sir?

COMMITTEE MEMBER: Yes.

CHAIRMAN: Thank you very much Mr. Falcey.

MR. FALCEY: Thank you.

MRS. STREETER: I just wanted to ask Mr. Falcey how large his membership was, in New Jersey.

MR. FALCEY: Well, in New Jersey we have—we're low man on the totem pole as far as the old line organizations are concerned—we're only approximately between four and five thousand. We have 50 chapters throughout the State.

MRS. STREETER: Thank you.

MR. DWYER: When you have an active membership of four or five thousand, that's your enrolled membership, isn't it?

MR. FALCEY: That is the actual membership, as far as World War II veterans are concerned.

MR. DWYER: I'm going to take you back of the iron curtain on veterans' organizations. I have had the privilege of belonging to three posts because of the different locations in which I found myself over the period of the last 27 years, and the aggregate attendance at meetings totals about that in all of the segments of the veterans' groups. The enrollment has nothing to do with the earnest attention and attendance at the meetings of the various posts. They are reduced to a minimum, as a rule.

MR. FALCEY: I'll go along with you there, sir, but I feel that even though we have a small body, we are an articulate body; we are also set up as a thinking machine, a civic thinking machine.

MR. DWYER: The leadership that the veterans have is represented by the men who take their post work very seriously, and those are the men who are going to be responsible for the future course of this nation, both in a social and an economic aspect. That is why I have tried to emphasize this morning the happy conclusion that we have a thinking machine represented in the leadership of the veterans in New Jersey.

MR. FALCEY: If you heard my opening remarks, Mr. Dwyer, I sat back there and listened to you and observed your remarks, and I said I would like, if you were a veteran of World War II, to give you an application blank, because I think your aims and purposes certainly coincide with the American Veterans' Committee.

MR. RAFFERTY: The next gentlemen to address the Committee is Mr. Charles Becker, State Judge Advocate of the Veterans of Foreign Wars of New Jersey. Mr. Becker.

MR. CHARLES BECKER: Mr. Chairman and members of the Taxation and Finance Committee:

It is true that we sat in with the Conference of State Commanders with reference to this taxation question, but at our state encampment in Asbury Park, which went into session on June 18 to 21 of this year, a permanent veterans' revision committee was organized by resolution, especially in reference to the matter of rights, privileges, preferences, which was spoken about at the Committee yesterday here by me, and we were told to come back today to speak before you in reference to this privilege.

There are 336 posts of the Veterans of Foreign Wars in this State. Before we went into session last, there were 50,700 members of the Veterans of Foreign Wars of this State; and in all states, there are over 2,000,000 members of the Veterans of Foreign Wars throughout the country.

Now, we are asking, at your hands—we come to you, due to the fact that the Constitution is about to be revised, we come here and ask you, not as an Indian-giver; we're only asking the right of privilege and protection. The act that gave the veterans an exemption of \$500—whether it is constitutional or not, they have been receiving that consideration from the city fathers in the various 574 communities of the State of New Jersey. As an active member of the VFW for approximately 25 years and four years as state judge advocate and legal advisor of the state department, I know of no one condition that has placed the taxpayers or the city fathers or the Governor or the representatives of our state department in an embarrassing position.

I thought—I haven't got the true statistics—it was my opinion that possibly 10 per cent of the veterans in this State have received the benefits of that \$500 tax exemption. When you talk about 560,000 veterans in all, we have got to consider, when we talk of veterans, how many of them are in the various hospitals, how many of them are now walking the street? There are very few of them who even under the GI Bill of Rights have been able to open up and operate a business. I thought 10 per cent of the veterans own and hold real estate. I was told offhand here by a representative of the State, and I think he knows figures better than I, that he doubts whether five per cent of the veterans own real estate.

Now, we know well enough that the veteran is certainly struggling to exist. I was affiliated with many agencies during World War II, and I am a member of the first World War activity, and I know, as a matter of fact, that many of our heads of the family, veterans, are being offered jobs at \$25 and \$30 a week. That sort of earnings, with the high cost of living. . . . We here, as I sit around and observe the faces of members of this Committee, can well afford the luxuries. So can I, but in my capacity as legal advisor and state judge advocate, last year I had 370 problems of various types that were sent into my office to try to help the veteran. I want to tell you that I am not here as a paid representative. We do it because we want to do what we possibly can for the veteran.

I was a member of the band. I wasn't a colonel, I wasn't an officer, but I was a member of the profession of musicians. Some would say, "Well, I suppose, one of Petrillo's speakers," but that's not so. They have their problems, too, and rightly so. But I do say that we're asking that you give them some recognition. Let them see that you are going to consider. Well, we know that they did a job; they did it because they love their country. They certainly went out to protect the rights of their loved ones. I want to say that you gentlemen and lady, who were elected as delegates to this Convention—you're doing the very same thing that our great leaders did, those

who signed the Declaration of Independence. Many of them were killed, their wives were assaulted, their family and business were destroyed.

I am not unmindful of the fact that you have an obligation and that you're giving it the proper consideration, and rightly so; and I place you in the same position of those famous men. They went out to preserve this great Democracy and start it; and they knew what they were going to be confronted with. Maybe many of you here in this Committee are going to be condemned—right or wrong, you're going to be wrong. But I disagree; I don't think that the people should try in the future to take it out on you. We realize that it is quite a problem, but may I say that the veteran isn't responsible for the high tax rate. I say that it's the man at the head of the government, and we have very few veterans who are affiliated with government, especially in the Veterans of Foreign Wars.

Believe it or not, in our preamble we have to definitely, and we do, stay out of politics.

Now, when that \$500 exemption was given to the veteran, we had to go to the politician; and I don't consider you gentlemen—lady and gentlemen—that you are politicians. We don't have to have the veteran go and ask for something. We're only asking that you give us that protection. In doing that, I say that if the Constitution does not give the veteran that preference, that privilege, or that right of taxation, then it's purely up to the legislators to do so. We have had a lot of sad experiences with them, and when they set it up in the law that the legislators "may," then we are never certain. We want it to be certain, so that they "shall."

We went over this matter very carefully—the committee—and the resolution was presented on June 3, was sent by mail to Dr. Clothier and to Oliver Van Camp, and it set forth those three principles which we think we are entitled to. We don't say that just because we did something, we want something for nothing. We're getting it, up to the present time. It hasn't created a hardship among all of the taxpayers in the State.

I'm not satisfied with a lot of things that Governor Driscoll did as soon as he took office, and it wasn't the veterans who created certain jobs. I say that goes for the City of Newark, and I am not satisfied; but we have to take the communities, the city fathers, who are responsible for our tax problems. It's not the individual, it's not the taxpayer. They are not organized, they haven't got much to say or do about it; but the veteran group is organized today, and if it weren't for the Governor's calling this plan for the revision of the Constitution, we wouldn't be here. We'd get along just as we have in the past, but I do say to give them a chance. If they are able to earn a little money and they want to go into business, it's perfectly

all right. As far as property is concerned, there are very few of them that own real estate. I feel as if, in getting the exemption—and I don't know how many veterans really have their home, and if they have, what have they got in it. I don't think they have \$500 for exemption.

CHAIRMAN: Pardon me, Mr. Becker, we have had, this Committee has had, referred to us specific Articles of the Constitution to consider. May I ask just what particular one of those you are speaking on? And have you, as I understand your convention, have you got a particular recommendation to make to this Committee?

MR. BECKER: Yes, I presented the resolution to Dr. Clothier and to Oliver Van Camp, and in that resolution we are asking for a tax exemption to be set forth in the basic law. We are not asking for a specific amount.

CHAIRMAN: Are you asking for that provision apparently as it was before, as to the tax clause?

MR. BECKER: Yes, only that we should receive—

CHAIRMAN: Or do you want to make it mandatory?

MR. BECKER: That's it exactly.

CHAIRMAN: In other words, you want to legalize your present \$500, at least.

MR. BECKER: That's it exactly, but we haven't set up an amount, say \$500 or \$2,500. We felt this way about it, in conference—if our state sovereignty today is financially embarrassed, and they want to give us some consideration, we're willing to take something; but we would like to have it in the basic law and, maybe later on in years, if we are able to reduce our debt and are in a position to go along nicely, then, I say, I'm satisfied that the lawmakers of our State will give to the veterans the consideration that they have always given them in the past.

Therefore, it is my request to you that in the revision of the Constitution, the matter of taxation as to an exemption be set forth in that Constitution so that we may look to the future as far as that protection is concerned. We don't want to seek out the city fathers—I mean the politicians—and they'll come back and say, "Well, we're going to give you this \$500, but if you don't do as we ask you to do, we're going to try to see whether we can or cannot have it declared unconstitutional." I do want to say this, that we don't want to be put in a position, because the veteran doesn't seem to have the available cash to constantly go before the courts, the Supreme Court. It takes money to do so, and on the little sum of money that we get in the form of a yearly dues of \$3.50 we don't seem to have a lot of money for that very purpose.

CHAIRMAN: Thank you very much, Mr. Becker.

COMMITTEE MEMBER: I'm not quite sure whether your application, or suggestion, is that a certain specific amount of money be made in the exemption clause.

MR. BECKER: I gave that consideration, and I thought, and I so explained it to our state officers, that if we demanded a certain specific amount, I was of the opinion that it would be class legislation; and for that reason, we left the amount out.

MR. RAFFERTY: The remaining speaker on behalf of the various veterans' organizations is Mr. John W. Bill, who will speak for the Disabled American Veterans. He will be heard at two o'clock. Thereafter, Mrs. Ada J. English, at the request of Dr. Clothier, will speak on behalf of the New Jersey Library Association and the Library Trustees Association of New Jersey; and immediately upon the conclusion of Mrs. English's presentation, we will hear the matter of dedicated funds.

CHAIRMAN: We stand adjourned until two o'clock.

(The session adjourned for luncheon at 1:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Thursday, July 10, 1947

(Afternoon session)

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

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: We will now call, as the final presentation of the several veterans' organizations, Mr. John W. Bill, National Service Officer of the Disabled American Veterans.

MR. JOHN W. BILL: Mr. Chairman, and members of the Committee:

I am glad to appear here today on behalf of the committee, as outlined to you by Dean Ormsby. I concur in so far as the recommendations adopted by our group at several conferences on the amount of tax exemption for veterans. I want to relate to you one that is a personal problem of our organization. Our organization, so that it will be clear in your minds, is exclusively made up of men who have been wounded, injured, or disabled in time of war; and, therefore, at all times we are the smallest organization of the group in membership. So we don't speak of millions, because we wouldn't want to have that many casualties. You will agree with me there.

We feel that some specific idea must be adopted for the Constitution. In other words, there must be written into the Constitution some provision—I believe the provision we have labored on for several years, and it is the same provision that we submitted in 1942 and we submitted in 1944, and we re-submit now to you for consideration. There was a question raised here today about the Constitution being defeated in 1944 because of the veterans' tax exemption. That isn't the case at all. The cause of its defeat was more or less because many people thought that we were doing something while the youth of our country were away and they did not have an opportunity to express whether they felt a new document should be written.

Another point that helped to defeat the Constitution in 1944—there were too many "mays" in there, and there wasn't enough of that there "shall" be recommended, and too, the Legislature "shall" carry out certain recommendation, rather than they "may." Nobody

believes in "mays"; "mays" don't mean anything. Many of you here are lawyers, some of you are members of the bar, some of you are now members of the judiciary. You know what the word "may" means. I believe that if you are going to do service to the veteran, the word "may" should not be in there. In other words, I believe our provision that the Legislature *shall* be directed to grant a certain sum and that certain laws *shall* be approved—we feel that if you put in a clause in this Constitution where the Legislature is definitely directed to enact such laws, there can't be any doubt about it. If you put in that they "may". . . .

Now I know, in my 27 years of experience in Trenton, after I came out of the hospital after World War I, that it was difficult. One year you would get a bill and the next year someone amended on you and took all the fruit of it, and there was nothing left but a piece of paper. On the other hand, you would have this—a good bill was passed; some client would take it to the courts and the courts would declare it unconstitutional, and there you were.

I remember when I was Department Commander of the Disabled Veterans. I was the first state commander in New Jersey. We then had gotten a certain special bill passed for disabled veterans. Well, fellow veterans who weren't wounded didn't understand the complications we had to overcome, didn't realize our headaches and problems, our pains and aches, and they were envious of it. They raised a suit in court. It went to court and the court declared the act unconstitutional, because it was a special privilege act.

We say to you today, in this tax exemption, if you're going to do it, do it right or don't do it at all. I would rather not be kidded and be told frankly that I can't get something, than to think that I'm going to get something if the Legislature feels like it. Now, I have had a great deal of experience, as I have said. I remember when the distinguished judge here was the minority leader of the House. I recall very vividly, he was a splendid legislator, but he wasn't always able to get his group to go along on certain legislation. And you have that problem. You constantly have it. The Senator knows it. The Senator here from Cumberland understands fully.

You talk about the cost. The chairman here said—former Senator and former Treasurer of the State—one billion, six hundred million. Well, let me give you an idea of what tax exemption does. I applied for one just a few years ago; I decided I might just as well take advantage of the \$500 tax exemption. So I filed the necessary papers, and then behold, the following year my assessment went up \$750. So I didn't only pay the \$500, but I paid \$250 more. So that in your billion, six hundred million, you will find that most municipalities, I don't care where they are, will increase the taxation, and therefore the cost won't be that great. It has definitely happened. It has

happened to many. I know that a lot of municipalities will not grant you tax exemption because I know—I've attended meetings of the Legion, the D.A.V., the V.F.W., and other organizations, where some veteran would come in: "My tax collector won't do it in this town. He says if we do, the borough attorney will take it to court and have the act declared unconstitutional." The entire meeting will sit down on him and tell him to forget about his act. We try to do something else.

So that when you come into the question of "may," you are getting into difficulty. If you're going to do something for these boys, you've got to do it right. In other words, direct the Legislature to do it. If the Legislature is directed to do it, you have little or no trouble. The cost doesn't mean anything, because if we had lost this war, a billion dollars means nothing. We are throwing money away today like paper to foreign countries. And you read the papers—what results do we get?

These boys made a sacrifice. We ask you to go further than any other group. We ask you to write in specifically that any man who is a paraplegic—one who is paralyzed from his hips down, and who is going to get a home, we hope, if the Congress of the United States adheres to General Bradley's recommendation—that we contribute the sum of \$5,000, that their homes be made free from any taxation. You can understand that a man who is a paraplegic and has to go around in his chair—take your double amputees, take your amputees, don't you think that they deserve some consideration? Are we going to do it for them? Or are we going to be bullied by some organization who comes here today and says, "We are the greatest of the veterans' organizations. We are on the right side of the ledger."

As you gentlemen sit here today you know that right always overtakes might; and we know that we are right in our demands. And we ask you to adhere to it. We are not asking for anything that is selfish. We believe we have made a sacrifice. I don't want to say that I spent 18 months in a hospital after World War I; I didn't walk for one year. Did anybody offer me any sympathy? I should say not. I had to fight my way every inch of the way. I was an orphan at the age of 12. Did anybody worry about me? Certainly not. I went into the service when I was a little over 18. Then I went to Europe. Do I cry about it? I made a sacrifice. It took time for me to get rehabilitated. It took time for me to create a fortune. And if you are determined to do it, to overcome your handicaps, you'll do it. I still have scars. I have 37 pieces of shrapnel in my body today. Do I cry about it? Do I let it prevent me from going on? Definitely not. I have a duty to myself and to my less fortunate comrades. And I say to this Committee to be mindful of the sacrifices of these boys who were in the lines, who were in every hospital, and there are so

many of them. Go to Tilton General Hospital and you will be shocked. It reminds me of the old days when I see all the apparatus for legs and arms in the air.

Then we come here and we say, "Oh, we can't give them tax exemption. People will complain about it." Well, isn't that too bad! It wasn't a private war. Anybody who wanted to join the ranks could join. There wasn't any bar to it. I know I tried, and now Secretary of State General Marshall, he says, "Go back home, you're not going to be approved for service." He says, "Get yourself into something else. You're just out." But I made an endeavor to get back. And I know many others. It wasn't a private war in World War I, and it wasn't a private war in World War II. I know some of these war workers who would cut our hearts out made every effort to stay out of the service and used every trick imaginable, and yet they have the audacity to say to you gentlemen now that we shall not get tax exemption! I'm willing to meet them at any platform, wherever they may be, to uphold our rights.

We ask you for a liberal and general right written into the Constitution, for a paragraph that the property of *all* veterans—and we are not selfish. And if you can (and you have some very able men here; you have the former Comptroller, former mayor of the City of Orange, you have other distinguished lawyers here, and you have a jurist), I know that you can word the paragraph so as to give to these paraplegics, these double amputees, who have been citizens at the time of their enlistment or induction—waive taxes on their property and don't worry about the billion, six hundred million, because the taxes such as in the City of Newark, and the City of Jersey City, the City of Clifton, Passaic, Paterson, will raise it so fast they won't know what hit them. Why kid ourselves about it?

And if we want to raise money, let's get real tough about it. We're tough now; we're going to amend this Constitution. Let's say that we shall raise some money by some new method of taxation. It's coming; it's coming as sure as we are sitting in this auditorium. And we're going to continue to assume the burden. We're worried about constitutional phrases? How about this great enterprise we're assembling in here today? That is going to be an issue some day. Let's be frank about it. We're giving the State money. What are we getting for it? We're building buildings, private property, that's what. That's an issue that must be considered. We know it. Do other institutions of learning get the same privileges that Rutgers does? It's a private institution. Let's get it square. Have they deeded any property to us? Certainly not. And we're worried about tax exemptions for men who have bled on the fields! And yet millions of dollars—millions upon millions—have been given away. For what? Yes, for higher education. I believe in higher education. I always have, and

always shall. The higher educated the boy is the less difficulties we'll have in his committing crimes, in his being a nuisance or a menace to society.

We must consider those who have made it possible for us to be here. Even if we are in the minority—if there are 600,000 of us—they'll never take advantage of us. The figure, according to the law now in New Jersey, ceases—so far as veterans may be considered as of World War II—as of September 2, 1945, when that great general signed the armistice on the battleship Missouri, and from that day on the State of New Jersey does not consider a man who was inducted or enlisted, as a veteran of World War II. So that comes down. The statement given by the learned lady who was a colonel in the Marines is, of course, of a later date.

So we request that you will write into this Constitution, definitely directing the Legislature to give tax exemption to veterans. The question, I know, is going to be debatable as to whether or not you can do it. That will be for your Committee to decide. The question should be considered seriously with reference to those whom I have mentioned, and I want to repeat them: the paraplegics, the 346 of them in this State; 100 double amputees; and there are amputations of the arm or leg, something in the number of 1,000. So that you have not too many of them and they have really made a sacrifice. I'll answer any question any members of the Committee might have as to how it might be worked out, if they so desire. Any questions at all.

CHAIRMAN: Thank you very much, Mr. Bill.

MR. JOHN J. RAFFERTY: At the request of Dr. Clothier, the President of the Convention, the petition of the New Jersey State Library Association and other library associations has been incorporated within the work of this Committee. Pursuant to the request of Dr. Clothier, we will now hear from Mrs. Ada J. English, past president of the New Jersey Library Association, and chairman of this division of the New Jersey Constitutional Revision Committee.

MRS. ADA J. ENGLISH: Mr. Chairman, and members of the Committee:

I do not expect to give you all the oratory I have had the privilege of listening to today, but I hope to state my facts simply. We have been questioning whether or not we belong in this Committee because there is nothing in the present Constitution which deals specifically with the public libraries in the State. Finally it seems to have been decided that this is the Committee to consider our petition because, I believe, we are considered coordinate with schools, public schools, and you are the ones who consider public school questions. Therefore I should like to read this statement to you
(reading:)

"The New Jersey Library Association and the Library Trustees' Association of the State respectfully urge that a general provision be incorporated in the revised Constitution which will recognize the obligation of the State to support public libraries as a necessary part of the provisions for public education and culture.

The Constitution as it now stands thus recognizes the State's obligation to support public schools. (*Article IV, Section VII, paragraph 6*)

The following form for a similar provision for public libraries is therefore suggested:

"It is hereby declared to be the policy of the State, as a part of its provision for public education and culture, to promote the establishment and development of free public libraries and to accept the obligation of their support by the State directly, or through its subdivisions and municipalities, in such manner as may be provided by law."

That is the end of our statement. Public libraries in New Jersey, like the schools, have passed from privately controlled, privately supported, to publicly supported and controlled institutions. They are part of the general education plan and serve all ages. They are practically universities, taking over where the schools and colleges leave off, enabling citizens to educate themselves continuously and to keep themselves equipped for efficient activity in useful occupations and practical affairs.

The recent enactment of a law under which the New Jersey State Library and the New Jersey Library Commission have been made a division of the State Department of Education coordinate with other divisions of the Department, gives a clear recognition of the library's place among the educational and cultural agencies of the State.

The necessary legislative authorization for the *establishment* of public libraries in New Jersey now exists and 286 of the 572 incorporated municipalities of the State have already established some form of library service. There is, however, at the present time, no general recognition of the obligation of the State to *promote* the establishment of adequate library service or to set up standards for such service.

The inclusion in the Constitution of the provision we propose would insure the continuation of such general legislation as now exists and facilitate the enactment of such further laws as may, from time to time, be found necessary for the maintenance of an efficient library service.

The New Jersey Library Association and the Library Trustees' Association therefore advocate that in order to make libraries of the State more secure and effective, they be given definite recognition and autonomous status in the revised Constitution. Thank you. If there are any questions I shall be glad to answer them.

CHAIRMAN: Are there any questions? I would like to understand: We have in the present Constitution, a statement or a paragraph that there shall be established in the State a system of free

public schools. Your idea is to add a paragraph along that line—that there shall be established a system of free public libraries?

MRS. ENGLISH: That's exactly it, that there shall be. The point being, just as it was brought out in some of the statements made before concerning the veterans, we want something that says libraries shall be established and that they shall be supported. It doesn't mean that the State necessarily has to finance it; it means going back into your municipalities. We do want something specific so that we shall be recognized as a legitimate part of the educational process of the State, but not subordinate to it. We want to be coordinate, but not subordinate.

MR. WILLIAM J. DWYER: Why the distinction of coordinate rather than subordinate, if you want to be absorbed by the educational system? I mean, from the standpoint of appropriations. It's an obligation of a fund which we allocate to education. If you want to have your activity incorporated in that fund, why do you want to maintain your integrity apart from the school system?

MRS. ENGLISH: We don't want to be incorporated. That's the point. We don't want to be—

MR. DWYER: You say you don't want to be subordinate.

MRS. ENGLISH: No. We don't mind being coordinate, but not subordinate. I didn't say incorporated into but rather that we might be coordinate with, but not subordinate to. It is possible for the schools to take us on as a sub-branch of themselves, and we don't want it. We feel we are an independent institution.

MRS. RUTH C. STREETER: Is your present status satisfactory to you?

MRS. ENGLISH: Yes, that part is all right. It is only that we want to feel that we are entitled to have some kind of recognition under the law, as the states that have been writing newer constitutions have recognized public libraries. We do feel that the libraries are a separate and distinct institution from the schools, although coordinate with them and working in cooperation with them.

MR. RAFFERTY: Mrs. English, we have a communication from Margaret R. Wheley of the New Jersey Library Association. Is that the association for which you now speak?

MRS. ENGLISH: That is the association. Mrs. Wheley is the president of the association and I'm here as a representative.

MR. RAFFERTY: She asked to be advised of the time and place of hearing, but I suppose that has now been accomplished?

MRS. ENGLISH: That is correct.

CHAIRMAN: Are there any further questions?

(Silence)

MRS. ENGLISH: Thank you.

MR. RAFFERTY: May I ask if there is any other person present who desires to speak on the matter referred to by Mrs. English?

(Silence)

MR. RAFFERTY: If not, Mr. Chairman, we are now prepared to go into the consideration of the matter of dedication, if that should be agreeable with you.

CHAIRMAN: All right.

MR. RAFFERTY: I will now call upon Mr. William J. Gaffney, Secretary of the New Jersey Highway Users' Conference, who desires to make a short statement at this time, and thereafter to be excused to return to the witness chair at a later hour.

MR. WILLIAM J. GAFFNEY: Mr. Chairman, and members of the Committee, I regret to advise that the chairman of our Highway Users' Conference is in Salt Lake City. Therefore, he is unable to be here today. You will recall that a week ago Tuesday you requested us to prepare for the members of the Committee a brief on the subject of a dedicated highway fund. I'm happy to have with me today sufficient copies for each member of the Committee.¹

CHAIRMAN: Give them to the Secretary, Mr. Gaffney, and they will be attended to.

MR. RAFFERTY: Does that complete your statement at the moment?

MR. GAFFNEY: At the moment, yes.

MR. RAFFERTY: We call on Mrs. Kathryn D. Sullivan, Secretary of the New Jersey Conference of AAA Automobile Clubs. I'd like to point out that it has been agreed that these several persons who are to address us this afternoon will not make restatements of what another person has said, but rather what they shall say will supplement that which has been referred to by the previous speakers.

MRS. KATHRYN D. SULLIVAN: Mr. Chairman and members of the Committee:

I'm not an orator, so with your consent I'll just read this statement (reading):

"My name is Kathryn D. Sullivan and I am Secretary-Treasurer of the New Jersey Conference of AAA Automobile Clubs. For the purpose of this hearing, I'm authorized to speak on behalf of the combined membership of all AAA automobile clubs of the State.

The automobile clubs of this State have always insisted that the fees and taxes which motorists pay for the use of the highways should be dedicated exclusively to highway purposes.

We take this position, first of all, because we believe that a dedicated highway fund is indispensable to a sound highway program. It is difficult for us to understand how a long-range program of planning, constructing and maintaining the kind of roads we need in this State can be carried out successfully unless provision is made for a steady, dependable source of revenue.

We know from sad experience that a sound highway program cannot be

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

accomplished under a system whereby highway funds are appropriated annually by a legislative body. The present unhealthy condition of our highway system, the miles of congested highways, give mute testimony to the failure of such a method of highway finance.

In the light of present conditions, the rule of expediency, practiced for so many years in connection with highway appropriations, has proven itself to be a wasteful and shortsighted fiscal policy.

The AAA is very much interested in highway safety. Over the years, we have devoted our time and our resources to the promotion of such activities as driver training, safety courses in our schools, the school safety patrol, safety contests, etc.

It is because of our keen interest in the traffic accident problem of New Jersey that we want particularly to stress the importance of a coordinated highway safety program, a program which gives proper emphasis to the three important factors in any successful safety effort, education, enforcement and engineering.

We believe that the State has a definite obligation to its citizens to see to it that its highways are converted into safe avenues of travel, that safety features are built into our new and existing highways, and that accident hazards are reduced to a minimum.

We believe that the business-like approach to the problem of providing safe, adequate highways in the future is to make definite provision for this continuing state obligation through the adoption of a dedicated highway fund.

Let's consider the merits of the dedicated fund from another angle.

It has always seemed to us manifestly unfair and inequitable that the taxes paid by the motorist for the use he makes of the highway should be diverted to general purposes of government. We may be old-fashioned, but we have always clung to the idea that taxes should be assessed in accordance with ability to pay. When motor vehicle taxes are placed in a general fund or diverted to general purposes of government, the motorist is required to pay, not in accordance with his earning capacity, but in direct measure with the number of miles he is required to drive his car.

The injustice of such a method of taxation should be readily apparent when we consider that the great majority of automobile owners are in the low income group, and that they are already burdened with all the other taxes which citizens pay for the general support of federal, state and local governments.

Beyond this, I am sure you are all aware that the diversion of motor vehicle taxes violates the very purpose for which these taxes were conceived and adopted. As a toll for the support of the highway system (which they were intended to be), they are fair and reasonable charges against the motorist who uses the highway system; when considered as 'just another tax' for the general support of government, they become an exorbitant and oppressive sales tax on an essential economic activity.

For the sake of emphasis, let me repeat that the mechanics of the dedicated highway fund provide the most equitable form of taxation ever devised, because it distributes the cost of a governmental facility among the users of that facility in direct proportion to their use. In no other form of taxation is the amount of the tax so commensurate with the benefits received.

We believe it is good business and good government to perpetuate a system of taxation which has proven so popular with so many citizens and which can so effectively perform the job it was designed to accomplish.

And let us not forget that the dedicated fund is not something new or untried. It is a sound, well-tested method of highway finance. It is already incorporated in the constitutions of 19 states and will be submitted to the people of three additional states, Massachusetts, Tennessee and Florida, next year.

In conclusion, let me emphasize that highway transportation has become a vital force in the social and economic development of this State. We can no longer take it for granted. It affects the life of every individual

citizen. It follows that the State has a great and continuing responsibility in financing and constructing adequate highways and bridges and in maintaining them after they are constructed. This responsibility is fundamental. The adoption of a dedicated highway fund in the new Constitution to protect and perpetuate the means by which this responsibility can be carried out is therefore, we think, essential.

In view of the great interest which exists throughout New Jersey in the question of a dedicated highway fund, it appears to us only fair and right that this measure should be classified as a controversial question and submitted to the voters of the State. In the last analysis, it is the people themselves who should ultimately determine their basic rights under the Constitution, and we feel that this question definitely affects our basic rights."

We respectfully request your earnest consideration. Thank you.

CHAIRMAN: You haven't any special proposition there of the actual amendment you desire to have put into the Constitution?

MRS. SULLIVAN: I believe that is in the brochure that is being delivered to the Committee today.

MR. RAFFERTY: Mrs. Sullivan, one of your propositions is that should this matter be deemed to be controversial, that alternative propositions be submitted to the voters in the fall?

MRS. SULLIVAN: Very definitely. Let the people of the State decide.

MR. SIGURD A. EMERSON: You speak for the directors of your association, or do you speak for your membership?

MRS. SULLIVAN: For both.

MR. EMERSON: I think your association during the last week sent out a questionnaire to your membership. I saw one which I thought came from your association. Have you interviewed or received the views of your membership as to this matter?

MRS. SULLIVAN: Not recently. It has been a policy of the AAA automobile clubs, over the years. It has from time to time been submitted to the membership.

MR. EMERSON: How many members have you?

MRS. SULLIVAN: We have in the State of New Jersey approximately 50,000.

MR. EMERSON: Could you tell us how many of those members have signified their views which coincide with yours?

MRS. SULLIVAN: It would only be a guess, because no such survey has been made since before the war, but the majority was always about 80 per cent to 90 per cent on any surveys we have made in the past. We haven't made any since before the war.

MR. EMERSON: So that the views which you are presently expressing are the views of the officers and directors of your association?

MRS. SULLIVAN: Primarily, yes. But to carry it further, the membership as well, because from time to time over the years they have been polled on the issue and the great majority of the membership of the organization holds these views.

MR. EMERSON: You have never polled your membership with respect to whether or not this matter should be incorporated in the Constitution?

MRS. SULLIVAN: No.

MR. DWYER: Your membership is all-inclusive in so far as the drivers of passenger vehicles are concerned?

MRS. SULLIVAN: That's right. We represent the passenger car owners.

MR. DWYER: Those who have a triple A on their car, are the people for whom you speak?

MRS. SULLIVAN: That's right.

MR. DWYER: You haven't made a comprehensive poll of their recent sentiments on this; you are speaking now more or less officially as an official of this organization, without having canvassed your membership?

MRS. SULLIVAN: I'm speaking of the official policy of the organization. It has been the policy of the organization for many years. We haven't made a poll in the light of its place in this new Constitution.

CHAIRMAN: Thank you, Mrs. Sullivan.

MR. RAFFERTY: I now present Mr. Franklin Nixon, Master of the New Jersey State Grange.

MR. FRANKLIN C. NIXON: Ladies and gentlemen, for many years—

MR. RAFFERTY: Just a moment, please, you were co-author of some correspondence I got, weren't you?

MR. NIXON: That's right.

MR. RAFFERTY: Who was the other?

MR. NIXON: Mr. Forrest of the Farm Bureau.

For many years the Grange has favored a dedicated highway fund in the State Constitution. (*Reading*):

"A dedicated highway fund means good roads and good roads are essential to farmers. As a representative of a large organization of farmers, and as a farmer myself, I'm acquainted with the road situation in rural areas. Generally speaking, these roads are not suitable for the traffic which passes over them.

There are still many miles of unimproved dirt roads in New Jersey. Many of our farm-to-market roads are still too narrow and contain many other hazards that are a menace to life and limb.

These roads carry a tremendous volume of agricultural products to the markets of this and other states. Although it is not generally known, over 25 per cent of all trucks registered are owned by farmers. Poultry, eggs, milk, fruits and vegetables depend almost entirely on truck transportation for their shipment from farm to market. Not only are we dependent upon good roads for the shipment of our farm products, but we depend upon these roads for our personal transportation and for the transportation of our children to and from school. In addition, our feed and supplies must be delivered by car or truck to our farms.

I am mentioning these facts for the purpose of emphasizing the important stake New Jersey agriculture has in a good system of rural roads.

As farmers and business men, we fully understand that roads cost money. As a matter of fact, we were led to believe that the problem of road money was solved when our Legislature passed the first motor vehicle tax law back in 1926, and provided that motorists' taxes would be used only for road purposes.

We of the Grange can never condone the high-handed manner in which these road moneys were misused during the past 15 years. In the face of our road needs, it is difficult for us to see any justification for the diversion of over \$150,000,000 in road taxes to other purposes.

Some people may say: 'You are overlooking the fact that we have other problems in the State beside road problems.' To them I would answer: 'Yes, there are many problems to be solved and the road problem is today one of the most serious of them. But we have recommended a definite solution to the road problem—a solution that is fair and workable and that has stood the test of time—a dedicated highway fund. In your efforts to solve your other problems, is it wise to abolish the time-tested solution to your most serious problem?'

Gentlemen, I believe it's time to face the facts. There is a place to put our road moneys and that is on our neglected highway system. There will always be a need for road construction and road repair. So long as we consider our road moneys as a rubber ball to toss back and forth in the game of politics, just so long will we fail to recognize our obligation to our greatest asset—our highways.

The farmers of New Jersey are looking to this Convention to face with courage the problem of road finance. We believe that the dedicated highway fund is the only logical answer to that problem.

As members of the State Grange and as citizens of New Jersey we respectfully request that we be given the opportunity to vote on the question of a dedicated highway fund, as a separate issue, when the Constitution is submitted to the people next November."

Thank you.

CHAIRMAN: Any questions?

(Silence)

CHAIRMAN: I'd like to ask Mr. Nixon about one statement you made there about the diversion of funds. I was talking to Judge Rafferty, and it seems to me that we did at one time over the past several years, when we were pretty hard up, have submitted to us by a general referendum on the November ballot, the question of diverting about \$1,800,000 to some special fund for supporting people, or some emergency measure or something. Do you recall that?

MR. NIXON: I think that was relief.

CHAIRMAN: Emergency relief, yes. The people had a chance to express their views on diversion. It was rather small compared to some of the others you mention.

MR. NIXON: That's right.

MR. MILTON C. LIGHTNER: I was going to inquire as to whether you had a specific proposal for defining such a dedicated fund? There is a specific proposal included in this brief which was submitted to us this afternoon. I don't know whether you are familiar with the text of that or not.

MR. NIXON: We are more anxious to have the rural roads, the

farm-to-market roads improved, and that money that is taken from the licenses and taxes be applied in that manner.

MR. LIGHTNER: That would include roads which are not state roads?

MR. NIXON: That's right.

MR. LIGHTNER: And which are not even county roads?

MR. NIXON: That's correct. Many of our farmers today live on dirt roads. I guess you are well aware of that.

MR. LIGHTNER: The point of my inquiry is as to whether the text of the proposals that have been made to this Committee are sufficiently broad so as to cause a dedicated fund, such as you are speaking of, to be dedicated to as broad a use as your presentation urges.

MR. NIXON: I can't answer that, sir, but we feel that these farmers on the dirt roads are helping to carry on by paying taxes, and they are entitled to much better roads than they have in the present day.

MR. LIGHTNER: Well, I'm just raising the question as to whether these proposals are as broad as what you would wish, or whether it is your intention to submit to this Committee any specific proposal which would be broad enough to be sure to encompass the aims that you are in favor of?

MR. NIXON: That might be worth considering, sir.

MR. ALLAN R. CULLIMORE: It seems to me that this proposal, in one important particular, differs from any proposals we have had so far, and that is with respect to submission to the people. I think so far as I remember we have had no request of that particular kind. In other words, your feeling is, rather than leave this to the Legislature, or even to the Constitutional Convention as such, that you would like to use the Constitutional Convention as a medium of submission to the people? That's the point?

MR. NIXON: We feel that it should be up to the people to vote on this question.

CHAIRMAN: Is it your idea to have a separate submission to the people apart from the Constitution, or a clause in the Constitution which may be left in or out by vote on that particular part, as they did in New York State a few years ago on their constitution?

MR. NIXON: I think it should be a separate vote before the people to decide on that question.

CHAIRMAN: Aside from the Constitution?

MR. NIXON: Yes.

CHAIRMAN: That under our law empowers us merely to advise legislation?

MR. DWYER: In the context of your statement, sir, if my understanding isn't perfect, I'm presuming you stated that this was the

most important subject from the standpoint of the Grange. To contrast that to the needs of education from the standpoint of state support, the dedicated fund should be devoted exclusively to the highways, no matter what the emergency might be in the State? We had a great emergency in the depression days which was primarily the cause for the diversion of \$150,000,000. Your attitude would be one that would give no flexibility to anybody in determining how state moneys, no matter what their source, should be used. You would lock it up completely in this one particular dedication.

MR. NIXON: That's the way we feel, sir. That money is collected for that purpose.

MR. DWYER: I'm trying to get the philosophy in back of your statement. You do that to the exclusion of probably the school system, which is quite significant in its social implications in so far as you are probably a father and the head of a family. There might be an emergency that might affect their interests, and there would be no latitude at all if we specifically stated that the highway fund should have no other purpose than building roads in the rural districts, from your standpoint. From my standpoint as a resident of a metropolitan area, we are terminal points where you come to town and deliver your produce; our city streets are somewhat impaired by the heavy traffic which is concentrated from the rural districts, and yet we get very little relief, if any, from that source. We have to bear the burden of maintaining our own municipal thoroughfares. So you are asking for a very particular privilege according to this analysis we are being faced with now.

MR. NIXON: That's right, sir.

CHAIRMAN: Any further questions?

(Silence)

CHAIRMAN: Thank you very much, Mr. Nixon.

MR. RAFFERTY: Now we will call Mr. William L. Mallon, Secretary of the New Jersey Automotive Trade Association.

MR. WILLIAM L. MALLON: Mr. Chairman, members of the Committee *(reading)*:

"I'm William L. Mallon, a trustee and the secretary of the New Jersey Automotive Trade Association, an organization representing 990 retail automobile dealers doing business in this State. As small business men located in all of the principal business communities and in practically every crossroad of the State, we contribute substantially to the economic well-being of New Jersey. As progressive businessmen we have a vital interest in any question that not only affects our industry but also any question that affects the present and future progress of our State.

From the inception of motor vehicle fees, dealers have consistently contended that all motor vehicle receipts be dedicated to the construction and maintenance of our highways.

Thirty years ago we realized the inadequacy of our highway facilities and applied our efforts towards obtaining new and improved highways sufficient to meet increasing demands. While it is true that safety was an important item of highway transportation even at that time, it was not

as clearly evident as it is today. The protection of life and limb on our highways is something to which every American should give time and thought.

It should be noted that since 1932, \$150,000,000 of highway users' taxes have been diverted to other purposes. This diversion has seriously reduced the progress that should have been made in the improvement of our highways during the 1930's. Such diversion should be prevented by a provision in the new Constitution.

Today we find ourselves with a seriously inadequate highway system. The economic progress of New Jersey, situated as it is, is dependent upon facilities for highway transportation that should be second to none in the country. With the overloading of our present highway system, many bottlenecks are constantly hampering highway movement, and are most expensive. One of the most serious features today is that the present congestion is conducive to a large number of highway accidents contributing to an excessive number of deaths and permanent injuries.

There can be no question but that the production of new cars and trucks will increase annually . . . there can be no question but that a large number of citizens of this State will expect to own and operate these vehicles not only for pleasure, but as a necessary means of livelihood. Unless our State makes an adequate highway system available, the citizens of New Jersey will be denied their rightful privilege, and all will suffer economically.

For the benefit of the citizens of this State, for the protection of life and limb, and in the interests of the general economy, it is necessary that a sound, continuing financing policy be adopted to cover necessary highway costs in the years ahead.

This may be best accomplished by including in the new State Constitution a provision that the revenues from the gas tax and registration fees of motor vehicles be dedicated to highway purposes exclusively. While the automobile dealers are sure they are sound in the advocacy of this principle, we realize that the question is a controversial one in certain quarters. It therefore should be settled by the citizens of New Jersey who contribute the special taxes for the privilege of operating motor vehicles.

We urge the Constitutional Convention to approve a provision that will place this question before the people for their decision at the next election."

Thank you.

CHAIRMAN: Any questions?

MRS. STREETER: Mr. Mallon, I'm sure that you and all the other witnesses realize that you have a very strong case for a liberal appropriation to highways. Whether or not you should have all the money, as you say, is debatable. There is one bit of information I would appreciate having. You, and several other witnesses, have stated that in the last 15 years the sum of \$158,000,000 has been diverted from the highways, which is averaging over that time, \$10,000,000 a year. Could anybody tell me how much has been appropriated to the highways in those 15 years?

MR. MALLON: I could, Mrs. Streeter, but I'm sorry; I understood I was limited to five minutes and did not prepare any statistical data. But I would be very glad to submit that to you, and to do it year by year.

MRS. STREETER: The total is all that I was interested in.

MR. MALLON: I wouldn't want to express an opinion at this time, but I'd be very glad to give you that data.

MR. RAFFERTY: Mrs. Streeter, I'm advised that Mr. Gaffney has that data and will present it.

MRS. STREETER: Fine. It would be interesting in comparison.

MR. CULLIMORE: I think, Mr. Mallon, that one of the things that has bothered the Committee more than anything else is the applicability of this general principle to other funds dedicated in other fields. It seems to me that is the thing that is in the back of our minds and is going to be of the utmost importance. That is, whether we can adopt with respect to other funds in other fields with the same general principle, what you would ask us to adopt in this field. I think that makes the question difficult. I wonder if we could have your comment on that?

MR. MALLON: It seems to us, sir, and we have always felt, that the State of New Jersey requires, to progress, a system of highways second to none. The improvement system has suffered by virtue of the fact that sufficient moneys have not been consistently appropriated to carry out a program. The construction of highways is not something that you can do at five minutes' notice. It takes a long time. They can't be built overnight. Consequently, when one Legislature one year may appropriate a large sum, and the subsequent Legislature rescinds that appropriation, it interferes immeasurably in the development of a highway system and may curtail the activity as to extend it two, and three, and four years. We feel, for the benefit of all the citizens of the State, that the moneys derived from the motor vehicle users should be dedicated to that particular purpose. It will be to the economic advantage of everybody, and will insure a continuing of the policy as to road construction, and the carrying out of a long-range plan.

MR. CULLIMORE: I wouldn't care to argue about it. But the only question was, applying it to other things such as my own field, education, what you say concerning the highways certainly would apply to the whole field of education. It is very difficult, of course, for us in education—I'm speaking now of primary and secondary education. We have a policy which is for the benefit of the teachers—their salaries, the benefit of the development of capital facilities. Unless we are assured of specific and definite aid we cannot carry it out, and yet we are not so secure. Would you indicate that perhaps we might apply these principles to more than highways?

MR. MALLON: Why, Dean, it seems to me—I, as an automobile dealer, don't feel qualified to talk on your educational subject—but it seems to me there are certain fundamental activities in the State that require a continuing program. It would be vital to dedicate, as it appeared necessary, to protect those vital activities. Now, to me the educational system is an overall system which applies to everyone and should be taken care of from taxes derived from everyone.

That is my personal opinion. I'm not speaking for the association at the moment, sir. You asked me a question that is a little out of the automobile line.

MR. DWYER: I'm greatly interested because there has been a mass of evidence brought to this Committee by those who are directly interested in the dedicated highway fund. Now, I haven't reached any conclusion, so I can ask questions very freely. I would refresh your memory, and I assume that you know all about 1929 and the travail that followed 1929, up until the inauguration of World War II, which relieved the financial strain on individual pocketbooks to an extent that relief wasn't necessary. But we did have a relief problem that extended over ten years in this State, with no visible means of supporting the people who suffered as a result of that financial debacle. There was nothing in sight. Municipalities were receiving properties for non-payment of taxes. In the entire field of the operation of government, communities were beset with demands. The poor masses were confronted with problems that were insufferable. They couldn't get relief. The State of New Jersey had some money which it made available by going into this so-called segregated or dedicated fund to bring relief to all of the citizens. If it hadn't been for that fund we might have had a condition similar to that which existed in Athens, Greece. We heard of people living out of garbage barrels. But we did have a fund that was made available to us because it wasn't specifically dedicated or embedded in the Constitution of the State of New Jersey.

You would like to deprive the people as a whole in New Jersey of access to any moneys that they may have in their treasury for the purpose of sustaining this sacred right of highway expense? Have highway advocates ever given thought, I mean in their debates—you belong to more than one organization—to the general effect on the state economy that the segregation of this fund might have in an hour of financial strain?

MR. MALLON: We have, in a general way, yes, sir. We believe that that money could have been more beneficially expended during that period if we had continued with a road construction program, and provided work for a large number of people who were very willing to sit down and do nothing provided the government gave them money to live on. We think the policy of relief was somewhat overdone and more moneys were diverted to that purpose from the highway funds than was necessary or beneficial. We believe that the citizens of this State and the economy of this State will suffer for a number of years because of the lack of progress that was made during the period you referred to.

MR. DWYER: Well, we had industries close down. I'm in the banking business. Some were on the verge of closing, and many did

close. Delicatessen stores went out of business and grocery stores went out of business. In fact every segment of our business community was seriously impaired as a result of this depression. Our salvation reposed in the fact that there was some money available that could be granted to those who were in great need and on the very doorstep of eviction or starvation. Now, if we lock this fund in the most sacred sepulcher, and we call it the highway fund to the exclusion of all other needs of our State, you think that will have a better effect on our economy and on our society?

MR. MALLON: I do, yes, sir. I think it is a human trait for all of us to follow the line of least resistance. If there had not happened to be available a certain amount of these bonds which had been authorized for highway purposes, we would have knuckled down and we would have raised a sufficient fund to take care of the needy. We followed the line of least resistance. Because it was handy we took it and said, "Thank heavens, that's done!"

MR. DWYER: Well, now, I'd like to get a little bit factual about this. You can take this off the record, if you will, because it isn't so significant from the standpoint of this Constitutional Convention. I just want to talk man to man.

(Off the record discussion)

MR. RAFFERTY: We'll now hear from Mr. Daniel J. Crecca, manager of the New Jersey Motor Truck Association.

MR. DANIEL J. CRECCA: Mr. Chairman and members of the Committee *(reading)*:

"Our organization was formed in 1914 and its membership is composed of all classes of motor carriers of property, common and contract, serving business and industry, and private carriers who transport their own goods. Our board of directors is vested with the power to administer the affairs of the association, and is also composed of all classes of carriers. They have authorized my appearance at this hearing.

Our primary objective is to provide the ways and means by surveys, investigations and studies, whereby motor carriers of property may be afforded information and assistance designed to produce efficient and economical motor transport service for business and industry, for the public generally, and in their own interest.

My remarks will, therefore, be devoted entirely to the position in which we find ourselves as the representatives of motor truck operators. We support the proposition that revenues derived from motor vehicle registrations, license fees and gas tax should be dedicated to highway purposes only.

In our opinion our state highway system has not been expanded and modernized in keeping with the advances made by business and industry, and while this may be said to be partly due to the shortage of materials and manpower during the war years, the principal reason is due to the fact that approximately 150 million dollars of highway user tax payments have been diverted to purposes entirely unrelated to highways since 1931. It is estimated by our national association from statistics obtained from the various state agencies, that approximately 33 million dollars of this sum represents motor truck registrations, license fees and gas tax paid by motor truck operators.

Regardless of the diversions of this huge sum of highway users' taxes,

motor truck operators of vehicles registered at a gross weight of 10,000 pounds and upward are forced to pay, by legislative enactment, beginning this year, increases in registration fees ranging from 2.4 per cent up to as much as 37 per cent in the 40,000-pound class. And these increases were forced upon us even in the light of Governor Edge's statement in his Second Annual Message to the Legislature of 1945, in which he said, in part: 'With the gasoline tax revenues showing every indication of reaching an all-time peak with the resumption of peace-time traffic, I am confident an adequate highway construction program can be financed on a cash basis.'

Registration fees and gas tax receipts are special taxes imposed for a special purpose, namely, for the privilege of operating our vehicles over the highways in the conduct of our business, transporting property of which we are the owners, or as for-hire carriers serving all kinds of businesses requiring motor transportation.

At the present time there is no assurance that further diversions of highway users' taxes will not be made. Therefore, if the State of New Jersey is to provide the means that a modern and expanded highway system can supply to facilitate motor transport in order to keep the cost of such service at a minimum, this guarantee can only be provided by protecting highway users' tax receipts in the new Constitution.

The antiquated condition of our highway system, and the bottlenecks that exist at strategic locations, subject motor trucks to numerous and costly delays enroute in performing pickups and deliveries of merchandise. This has increased the cost of this mode of transportation; and it will continue to increase with the anticipated progressive increase in traffic unless all of the available highway funds are used to modernize and expand our highways so as to reduce, and if possible, eliminate these delays.

It must also be remembered that the highway system of our State is the bridgehead for all traffic moving between the northeastern part of the country and the south, and with present-day production and distribution methods on a more or less hand-to-mouth basis, short-time buying requires flexible, efficient and economical transportation both on intra- as well as interstate traffic.

Our own State Highway Commissioner, Spencer Miller, Jr., has said that 'there is more congestion on the highways of New Jersey than in any other State in the Union. Indeed, it is six times worse than in the next worst State, California.' And he has estimated that the serious economic loss caused to business and industry by the delays in the congested areas could be reduced by \$750,000 annually in the cost of trucking alone under his projected highway expansion program.

According to our information there are 797 communities representing approximately 43 per cent of the total in New Jersey not served by railroad which are entirely dependent upon motor truck transportation for their everyday needs. It goes without saying that these communities are also entitled to the most efficient and economical transportation service which motor trucks can offer. After all is said and done, any increase in the cost of doing business must be reflected in the selling price of the merchandise or service rendered, and in the final analysis the public pays the bill. An expanded and modern highway system will help materially in keeping costs down.

I should like to mention in passing that the Port of New York Authority, whose function it is to provide facilities which will move traffic efficiently and economically in the Port of New York district, is undertaking the construction of a motor truck terminal in Newark for the consolidation of small shipments moving by motor truck. The purpose of this terminal is to eliminate delays in the congested North Jersey area, reduce motor truck transportation costs, provide an additional incentive for businesses and industries. If this initial terminal proves successful, as they believe it will, two additional terminals will be built in other cities in the New Jersey section of the Port of New York district.

The utilization of all highway users' tax receipts for highway purposes

is essential if we are to keep pace with the needs of business and industry, and to provide the kind of motor truck transportation service that is required, at the lowest possible cost.

I therefore reiterate that in order to guarantee the full use of highway taxes for the purpose for which they were originally assessed, that this question be placed before the people of the State of New Jersey for a decision."

CHAIRMAN: Thank you very much, Mr. Crecca.

MR. RAFFERTY: We will now hear Mr. A. Paul King, from the great county of Ocean. Mr. King is a former president of the State Association of Boards of Freeholders, and he speaks here today for the State Association of Freeholders.

MR. A. PAUL KING: As the Secretary has told you, I represent the Association of Freeholders composed of 21 counties in the State of New Jersey. Accompanying me here today is Mr. Adams who is the present president of the Association, and Mr. Kraut, representing the association, too. He is from Hudson County. (*Reading*):

"It is my privilege to speak with you this afternoon as a member of a county board of chosen freeholders; as past president of the state association representing the elected officials of the 21 counties in New Jersey. I am one of the motorists who annually pay to my State a heavy premium in taxes for the highways over which we ride. This is done gladly because I am proud of the great record of New Jersey in pioneering safe, modern highways in the nation. My State was the first in the Union, back in 1891, to pass a law authorizing state participation in road-building. Since the turn of the century, members of the several boards of freeholders have worked shoulder-to-shoulder with the highway department in building a matchless network of good roads, bridges and highways.

The vast revenue from highway and motorist taxes is intended for the extension, improvement and maintenance of highways and for that purpose alone. This is clearly shown in the legislative proceedings in 1927. The taxing system was sold to the motorists as a painless way of providing adequate roads throughout the State. This tax was to be reduced when the gas tax income exceeded the cost of roads and bridges. There has been no refund, nor a reduction; rather an increase accompanied by the harmful spendthrift practice of the diversion of a large share of these funds. This practice has produced a serious effect upon the economy of New Jersey.

Diversion of highway monies to unrelated purposes is the so-called cure-all of deficit financing of government in New Jersey. Literally, it means 'to divert appropriated money to other objects.' In the past 20 years, diversion has siphoned away from an adequate road-building program more than \$158,000,000—enough money to complete at once the north-south parkway from the New York State line to Cape May! Dr. Spencer Miller, our able Highway Commissioner and a delegate to this Convention, estimated diversions at \$7,358,000 for the fiscal year just ended June 30. For this we are penalized 2½ million dollars in federal-matched funds for road construction.

More funds have been diverted since 1917 than were spent entirely on state-aid to counties, townships and boroughs. The original high purpose of the motorist taxing legislation has so deteriorated that today less than half of the monies paid for roads in New Jersey go for that purpose.

Diversion of highway funds is no saving to the taxpayer. It is rather a double tax which must be paid over again for the final improvement of roads. It is wasteful of public funds because it creates a psychology of unlimited reserves which can always be tapped for any expensive whim of government. Meanwhile, our network of roads has disintegrated consid-

erably, through enforced neglect during the recent war. At the county level, a sum of \$19,384,221.25 is needed at once to put our roads in safe condition for use by motorists. In view of the shrinkage of the highway dollar, by as much as 55 per cent, this estimate, broken down to the specific needs of the several counties, will be greatly increased.

The chosen freeholders of New Jersey congratulated Governor Driscoll for his courageous stand in his inaugural address at the War Memorial Building in Trenton in January. He said: 'To support the highway program of New Jersey with every resource—this will require the use of *all present highway revenues for highway purposes*; and the maximum use of federal aid'. In taking this forthright position, the Governor fully adopted the position long advocated by freeholders in New Jersey to guarantee unhampered construction of good roads and bridges, highways, parkways and freeways.

The gasoline tax collections for 1946 amounted to \$27,419,533.30; this year the income will range between 50 and 60 millions. With more highway revenues from users than ever before, and an ever-growing potential, the counties of New Jersey have been forced into an epidemic of bond issues to finance roads. These will prove a heavy burden for more than a generation. This at a time when there is a drying up of the lush source of uncollected taxes at the local level of government as well as tax liens. Meanwhile, the cost of State Government is spiralling upwards at the rate of a million dollars a year and more.

In county administration we face increased tax rates to bear the burden of costs passed on to us by the State, which has diverted funds originally collected for road purposes. This serious economic squeeze is taking place with no corresponding broadening of the tax base. The rural neglect of roads is accompanied by urban death, a loss of population and property values. A distinguished engineer is author of the statement that 'Newark is being choked to death by lack of sufficient access highways for business to thrive.' Our association holds for good roads and safe roads for *all* parts of New Jersey, with an immediate end to the harmful process of diverting highway revenues to other and unrelated purposes.

The method of accomplishing this purpose may well be left to the wisdom of this Committee on Taxation and Finance. The people of New Jersey should be the sole judges as to whether gasoline taxes and motor vehicle fees should be used exclusively for highway purposes. The statement of a public question for referendum on the ballot in November might be phrased thusly:

'That all highway, road, and gasoline funds and taxes shall be used exclusively and directly for highway purposes; the construction, improvement, maintenance and repair of public streets and highways.'

All of us want Main Street in our town to be the safest in America. We also covet for New Jersey its one-time outstanding position of leadership in the Nation as a builder of broad, safe and modern roadways, the pioneer in parkways and freeways. This worthy goal cannot be achieved as long as we ignore the original spirit of the legislation which created these taxes and continue to divert road monies to other purposes. We, of the several boards of chosen freeholders, are in the habit of keeping our word with our people. We desire that our great State does not break faith with its motorists, the principal wealth-producers in our economy. Democratic government may only survive on honest dealing and truth-telling. The truth of a sound highway program for New Jersey lies in spending every dollar brought in by users of the facility on its repair and in new construction."

I might say that prior to being succeeded by Mr. Adams as president of the association, I sent out an inquiry to the 21 counties asking them to furnish me with an estimate of monies over and above any monies which they had in sight to bring their highway system up-to-date. I have a list here which was furnished me at that

time showing that the requirements over and above their present requirements for upkeep of the roads is \$19,384,221.

I might enlarge on another paragraph in this and say that throughout the county highway system in the counties in the State today, every one of them is floating bond issues. Last week, to catch up on only emergencies, in Ocean County we authorized a \$125,000 issue. I know that in Burlington County, my neighbor, they issued \$400,000 worth very recently. I know that every year Monmouth County has issued approximately half a million dollars worth of bonds to keep themselves going. There is a very close connection between the amount annually diverted to other purposes by the Legislature and the increase for road purposes in the municipal and county budgets. The two items practically match, so that the diversion of highway funds has been no saving to the taxpayers themselves; they have had to turn around and raise it by real estate tax.

CHAIRMAN: Any questions?

(Silence)

MR. RAFFERTY: Thank you, Mr. King. Mr. Gaffney will now return to the chair and will conclude the presentation on the part of the auto users. Mr. Gaffney has asked me to say that he will be glad to submit to any question of any kind whatsoever, and give such answers as are within his competence, which he assumes is not meager.

MR. GAFFNEY: I hope the compliment on the part of Judge Rafferty will not prove to be a third strike on me.

I would like to say at the outset, in view of the discussion this morning when Mr. Kerney was on the stand, with respect to the one fund and the separate fund, the brochure presented to the Committee this afternoon contains two recommendations under the caption "Constitutional Provisions." One deals with a provision which the Constitution does not recognize; and the other deals with a provision which the Constitutional Convention recognizes, a general state fund. So that in the event that when the question period arrives you should like to discuss that, you have it in the brochure, and we can discuss it from there.

I would also like to say that Herbert W. Voorhees, who is chairman of this Conference, which represents approximately 20 organizations interested in highway transportation, is president of the New Jersey Farm Bureau. Were he here today, he would speak not only in behalf of the Farm Bureau, but of all the allied farm organizations which are a part of that organization.

I also request that in reading my statement I be permitted to read it all before any questions are put to me. *(Reading):*

"I am Secretary of the New Jersey Highway Users Conference and Executive Secretary of the New Jersey Petroleum Industries Committee. Both

of these organizations are vitally interested in highway user taxation and the use of these special tax revenues for the full development of one of New Jersey's greatest assets—the highway system. It naturally follows that we believe in a dedicated highway fund and, in the brief time allotted to me, I will try to outline some of the many reasons why safeguarding highway user taxes is fair and equitable, practical in operation, good business practice and in the public interest.

In the first place, highway users pay special taxes in the form of gasoline taxes, license and registration fees for the privilege of using the highways. One form of taxation is a license to use the highways and the gasoline tax is a charge proportionate to the use. Government has always been obligated to furnish the people with roads to travel from one place to another, to transport finished goods and agricultural products to market, to provide means for the prompt delivery of the mails and as an aid in national defense. The story of roads from the early days to the present is a story of progress and the development of comfort, happiness and wealth for the American people. As a required governmental service it is only reasonable that the highway user should pay for this service, and the original legislative action in New Jersey taxing gasoline and assessing license and registration fees clearly indicated the reason for these taxes as well as the disposition of this special tax revenue collected from highway users. The fact should not be overlooked that motor vehicle taxes are, by their nature and in their origin, benefit taxes. They were not designed as sales or luxury taxes for the general support of government. They were imposed for one purpose and one purpose only—the maintenance and construction of highways and they are paid in proportion to the use made of the highways. What fairer method of taxation could be devised than this? The answer is obvious, and to carry the thought through, if this spirit of fairness is to be followed, then highway revenues must be used for roads and the Constitution should contain a dedication if the inequities of the past are to be stopped.

I don't intend to burden you with a long statistical resume of these diversions. Suffice it to say, that almost \$150,000,000 dollars of special taxes collected from motorists have been used for non-highway purposes. Besides unemployment relief, highway funds have been used to finance, in part, the Department of Commerce and Navigation, the Teachers' Pension and Annuity Fund, the Police and Firemen's Pension Fund, the Department of Institutions and Agencies, and the general appropriations act has, in many cases, contained diversions the identity of which were lost.

Hindsight is a poor substitute for foresight, but I can't help but think how well the highway funds diverted in the past could have been used to remove or correct the many traffic bottlenecks, particularly in North Jersey, that plague highway users, cost money and are one of the reasons for the ever-increasing toll of highway accidents.

The people of New Jersey can no longer afford the luxury of highway fund diversion. Even the most casual observer knows that the highway system of this State has not kept pace with growing traffic needs. More than this, we can no longer be complacent about the staggering toll of deaths and injuries on our highways. While the fault is principally with the man behind the wheel, we know also that existing structural faults in our highway system must be corrected, and that future highway construction must embody every possible highway safety feature. Highway construction and maintenance as a sporadic governmental service based on annual legislative appropriations does not face the problem squarely. Only through guaranteed revenues can long-range highway planning build into our highways the safeguards that are necessary to keep step with automotive progress. We can't afford to neglect this future obligation—and we must admit that past diversions of highway user taxes have contributed in part to the highway accident toll.

The principle of dedication of highway funds in New Jersey is not new. Highway fund payments to counties and townships have been dedicated funds for years. This principle and practice received recognition and re-

affirmation in the 1945 State Aid Road Law, section 27:13-7 of the *Revised Statutes*, which specifically states: 'The moneys in said special state aid road fund account are hereby deemed and declared to be dedicated funds and shall not be used for any purpose other than herein provided.'

The One Fund Act of 1945, section 52:9H-4 of the *Revised Statutes*, further states: 'Nothing in the act (chapter) shall be construed to change or affect in any way the payment or the amount of payment of moneys now or heretofore made under any items designated in former state highway appropriation acts as mandatory dedications or the payment or amount of payment of any moneys into or out of any dedicated funds.'

If this principle has been recognized as desirable at the local level, then it logically follows that it is even more desirable that funds available for over-all highway planning be protected, and this can only be assured through the adoption of a constitutional provision.

In passing, I might mention also that the State of New Jersey has in the past, of necessity, in order to function as a continuing solvent State Government, been compelled to allocate, segregate and dedicate specific sums for specific purposes. An enlargement of this statement would serve no useful purpose since a casual examination of the law and a consideration of how the State functions supplies all the necessary arguments to satisfy one that the State does, in fact, dedicate funds to specific purposes irrespective of the method, the manner, or the procedure followed, or the label given to such dedications. So, we see that there is nothing new or startling to the reasonable request that special highway taxes be used only for road purposes.

In order to plan and carry out a sound, long-range highway improvement program with a minimum of waste, extravagance and inefficiency, the State Highway Department must know what revenue will be available for any over-all highway program. General use or arterial routes through our cities, county and farm-to-market roads, and the State's primary system of main highways must be coordinated, and when projected long-range plans are prepared, the funds must be guaranteed and available as each phase of the program comes due. In this way we can build for the future on a pay-as-you-go basis and at equitable tax rates. Generous legislative appropriations today and none tomorrow will not permit advanced, long-range planning. Past experience provides the strongest argument for adoption of a constitutional safeguard against a repetition of this uneconomic practice.

Then, too, the equity and justice of dedicating the revenues from special automotive taxes to road purposes has been recognized by 19 progressive states which have adopted constitutional amendments to this end. In these states the question was put squarely before the people and they provided the answer. The people of New Jersey should be given the same opportunity to decide this question, which is of vital interest to every citizen of our State. This is true because highway transportation in all its phases affects, directly or indirectly, the lives and welfare of every man, woman and child in the State.

Highways are the life blood of the State. The agricultural, resort and industrial prosperity of the State is dependent upon the maintenance of a modern highway transportation system. The highways of tomorrow must be predicated upon continuous automotive progress. Industrial and agricultural progress will be measured by the successful carrying out of sound, long-range highway programs that can be successfully completed with available tax revenues. But, once again, such a result will not be accomplished through a hit-or-miss system of legislative appropriations which inevitably leads to highway neglect. Good business procedure dictates that highway tax revenues must always be available.

It is sound business, likewise, to consider that the importance of our highway system extends beyond our state boundaries. This is true for a number of reasons. In the first place, the recreational assets of New Jersey rank as a major industry, along with farming and manufacturing. Millions travel by automobile, not only within our own State, but from other areas

both near and far, to enjoy the great natural charm and beauty of our seashore, mountains and lake resorts. Recreational expenditures will exceed \$5,000,000 in 1947, and this is obviously good business for New Jersey. Our present highways have made this possible, and, if we are to capitalize to the fullest extent on these attractions, we should see to it that all revenues from automotive taxes are devoted to the improvement of our highway system.

Of interest also from a national standpoint is the position taken by the United States Chamber of Commerce with relation to the important question of the proper use of special automotive taxes. and I quote from a recent bulletin:

'Contributions by highway users to the cost of building and maintaining highway systems should be through special taxes or fees based on logical standards reasonably commensurate with the value of the use; and no part of the proceeds of these special user levies should be diverted from highway purposes.'

Highways are likewise important to national defense. New Jersey is a 'bottleneck' or 'through' state in the over-all highway transportation picture. In other words, practically all motor traffic from the Northeast, the South, Midwest and the Far West passes through some part of New Jersey. This is why good highways in New Jersey are so important from a national defense standpoint. It was found from a survey of road conditions in our State during World War II that there were serious deficiencies in our highway system in the event of any wholesale evacuation of people and property from the populous northern section of the State. The Atomic Age with all of its new problems gives further cause for thought and stresses the fact that we must not neglect our highway system through penny wise and pound foolish planning.

For these and many other reasons, the future development of our state highway system is of vital interest to every citizen of New Jersey. Consequently, the people of New Jersey are entitled to the opportunity of rendering their decision on the important question of adopting a provision in the State Constitution which will guarantee that all special automotive taxes will be dedicated to highways—an inalienable right which has been exercised by the citizens of so many other states.

Members of the Committee, we respectfully urge that you act favorably on this proposal."

CHAIRMAN: Mr. Gaffney, I'd like to ask you a question. I should like to know the answer, but I don't. Do the people who buy gasoline for motor boats and on inland waterways also pay the same gas tax?

MR. GAFFNEY: Mr. Chairman, the tax on motor boats for pleasure purposes is paid. It does not amount to a great deal. But the gasoline sold to the commercial fishermen in the State is refunded to them, as all other gasoline taxes not used over the highway are refunded—agricultural, factory use, and so forth.

MR. DWYER: Mr. Gaffney, you speak of a continuing flow of money to highway purposes which is far into the future, if we embed it in a constitutional proposal. Can you conceive of a time in the State's history, before we convene again as we are in New Brunswick, when there might be a saturation point reached in the building program and the highway needs of the State, so that the problem is reduced to maintenance rather than construction?

MR. GAFFNEY: I frankly can't conceive of us reaching that time. However, if that time is reached—I think this is your next

question—I can't conceive of such a time being reached in our time.

MR. DWYER: Well, you and I are not fair guinea pigs to make that statement, because our actuarial condition is not so promising. The doctor told me last week, so I won't see the completion of the plan. But to be less frivolous—if there is a completion of the program so far as construction is concerned, which might occur within a generation, there could be a benefit in the reduction of the tax.

MR. GAFFNEY: That's exactly what my answer is.

MR. DWYER: That's one conclusion.

MR. GAFFNEY: That's right.

MR. DWYER: If by any chance there wasn't a reduction in the tax, it might be an invitation to waste because of the accumulation. The tendency to spend money is inherent in all of us, I presume you know from observing *homo sapiens* through the years. Now, let me ask you, is there before you and your associates now a program of road building with any estimated cost attached to it, over a period of say two, three, four or five years? The statistics, of course, would be very helpful.

MR. GAFFNEY: I have before me, Mr. Dwyer, a brochure that was issued by New Jersey's Committee of 1000 for the relief of the traffic problem in New Jersey. It was presented, I believe, in 1945, before the New Jersey State Chamber of Commerce, at the Claridge Hotel in Atlantic City, and I would like to quote from that for you the Highway Commissioner's statement on that occasion, in which he outlined a \$150,000,000 building program for a period running somewhere a little over five years, and in which he says: "A five-year plan for the complete construction of Route 100, or a major portion of it, and for the foundation of a great parkway system in this State, could and should be financed on a pay-as-you-go basis and not by bond issue. The motor vehicle revenues of the State would be completely adequate for such a construction program intelligently planned and vigorously prosecuted." Does that answer your question, sir?

MR. DWYER: In a measure, yes, it does. I'm concerned about—and I hark back to something I have stated very frequently, probably to the distress of my associates on the Committee—the State of New Jersey, on the authority of one of our fiscal officers, is confronted with a deficit this year of fifty millions of dollars, and we have no visible means at this time of making up that deficit. And yet your proposal, while I believe it a great economic and social advantage to the State, gives no indication that we shall have any source of revenue available in extraneous funds surrounding the management of our State, that might be allocated by the Treasurer to the relief of certain unforeseen crises in the State itself, as they af-

fect all of the people instead of the particular class whose cause you bespeak.

MR. GAFFNEY: Mr. Dwyer, my answer to that question is a simple one. We stand on the principle that gasoline taxes and motor vehicle registration fees are benefit taxes. They are not paid by the highway user for the general support of State Government. They were not inaugurated as such. If the State is faced with a crisis, that is the problem of the State, and therefore the burden of all of the people. Let the State be realistic enough to face the problem, and assess equally upon the shoulders of all its citizens the cost of such burden.

MRS. STREETER: Mr. Gaffney, you apparently hold the same point of view that Mr. Mallon did when he spoke—what we should do in a crisis. In other words, we should do something else. We did do something else in the relief crisis. I'm reminded by the four who stayed at my elbow—we put on a sales tax. What happened to that? It didn't last very long. People in this State apparently don't take kindly to some of these other taxes. That is something I'm mentioning in connection with the dedicated funds, in case there were any crises.

On another subject—I have always been very curious, every time I have driven to New England or New Haven, to see that the States of New York and Connecticut charge tolls on their elaborate parkways. I spent about 50 or 60 cents, I imagine, in getting to New Haven, and as somebody said before our Committee the other day, he referred to a painless tax and we asked him if there was such a thing. I would say that that 50 or 60 cents is about as painless as anything I ever paid for the privilege of using those parkways in New York. Why is it that in New Jersey I have never heard any discussion of the possibility of paying for our big, expensive roads through a systems of tolls? It is not the county roads that Mr. King spoke of, or the farm-to-market roads that Mr. Nixon spoke of, that eat up so many, many millions, but these elaborate roads. Were some of those financed either in whole or in part by tolls, would that not relieve the situation to some extent?

MR. GAFFNEY: Colonel, I would like to answer the first part of that question with this statement, and I make it with authority. No toll roads in the United States are paying for themselves, including the great elaborate Merritt Parkway system through Connecticut, the Pennsylvania Turnpike in Pennsylvania, or the toll parkways in New York State. The tolls collected on highways do not even pay for the cost of maintenance and the administrative cost of operating the toll gates. Those are definite statistics that we have available. Let's get into New Jersey—

MRS. STREETER: Is that actually so, sir? I can't imagine how it could possibly be.

MR. GAFFNEY: That is actually so. Toll roads definitely do not pay for themselves.

CHAIRMAN: May I ask you, then, if the Pennsylvania Turnpike 3-3/4 per cent bonds, which some of us have invested in, aren't worth a darn because they are not being paid for?

MR. GAFFNEY: Mr. Chairman, no, I won't get into that because I would like to point out to the members of the Committee that when the Pennsylvania Turnpike was built, by some method—I don't know how—the authorities in Pennsylvania succeeded in getting from the Federal Government, not on the road program but as a public works program, approximately 35 per cent of the cost of building that turnpike. Therefore, it was never included in the bonds that were issued. That never had to be paid off. So you see, at the outset, on the Pennsylvania Turnpike, 35 per cent never went into the cost of it so far as the state was concerned. Now, the Federal Government does have a regulation, under its Public Roads Department, that no federal aid money can be put into the construction of any roads that are built as toll roads. But in the Pennsylvania situation, Mr. Chairman, 35 per cent of the original cost was paid by the Federal Government under a public works program, not under a highway program.

CHAIRMAN: And our bonds are fairly good from now on?

MR. GAFFNEY: I'm not a banker, but I understand that they are. I'd like to finish my answer to the Colonel, if I may, with respect to New Jersey. As I said at the outset, we stand on the principle that gasoline taxes and registration fees are benefit taxes and not general taxes. And in the face of the diversion of \$150,000,000 of highway moneys—

MRS. STREETER: Do you know, sir, how much you had left? I asked that question earlier.

MR. GAFFNEY: Do you mean how much New Jersey has put into its highways?

MRS. STREETER: In the last 15 years?

MR. GAFFNEY: New Jersey estimates that its investment in highways to date is \$350,000,000.

MRS. STREETER: Most of that in the last 15 years, would you say?

MR. GAFFNEY: I would say so, yes. I wanted to finish my answer to that question . . . So that in the light of the fact that approximately \$150,000,000 of special highway taxes have been diverted, we feel that in New Jersey toll roads would be just another tax on top of the road taxes that the highway user pays along with all of the other taxes that all of the other citizens pay.

MRS. STREETER: The beauty of toll roads, sir, is that if you feel that way you don't have to use them.

MR. GAFFNEY: I am informed that the system of parkways that is now in the process of planning by the New Jersey State Highway Department for the State of New Jersey will be second to none when completed, and it is not the intention of the Highway Department, under their present plans—assuming that they are going to have the revenues available—to have any toll roads in the State of New Jersey.

MR. CLYDE W. STRUBLE: Mr. Gaffney, do you happen to know how much money is involved in motor fuel taxes and motor license fees for a year in New Jersey?

MR. GAFFNEY: Yes. The appropriations bill just passed by the recent Legislature estimates an income from motor vehicle license and registration fees of \$26,000,000, which includes \$1,000,000 for the inspection stations. The estimate for gasoline tax collections for the coming fiscal period is \$26,000,000. I can say to you, however, that already, with only four months reported on gasoline tax collections, they are approximately a million and a half dollars higher than they were during our peak year of 1941, and that the collections by the Motor Vehicle Department, as of the end of April, exceeded the previous year by almost a million dollars, so it is safe to assume that the revenues to the so-called Highway Fund will be approximately 54 to 55 million dollars this next fiscal period—that is a conservative estimate, even though the appropriations bill only anticipates 52 million dollars.

MR. DWYER: When we are pleading for a cause we suffer greatly from a very circumscribed viewpoint. I'm thinking in general terms of all the people in New Jersey. The facilities of Routes 29 and 26 and 25, are of great benefit to the trucking interests of both Pennsylvania and New York State, aren't they?

MR. GAFFNEY: That's correct, sir.

MR. DWYER: We stress the important economic benefit which we derive in New Jersey as a result of our largess and appropriation for the benefit of the motor users. I come down to this Convention every day on Route 25 in a cortege of trucks of various descriptions. Do you think that they pay an adequate tax for the use of our highways?

MR. GAFFNEY: I do, very definitely, sir, for this reason. Most people, in looking at the revenues contributed to the State Highway Fund by the trucking interest, look only at the registration fees that they pay. Now, it must be remembered that trucks operating over the highway average from three to five miles per gallon of gasoline. I'd like to cite, as an example of the point that I'm trying to make, that during the discussion last year for increased truck fees, one large

petroleum transporter in this State told me that his annual license registration fee for his equipment was \$7,000 a year, but his gasoline tax bill was \$15,000 a year. He was held out as paying \$7,000 a year to the Motor Vehicle Department for the benefit of operating his trucks over the highway, but he was really paying into the State Treasury \$22,000. So I say to you, sir, that the most eminent authorities on whether highway transportation pays its way issued an elaborate booklet in 1941. The Honorable Eastman, who was then Public Roads Administrator, stated that truck operations, nationally, more than paid their way. I can furnish you with a copy of that if you would like to have it.

MR. DWYER: I'd like to have it very much. I'm seeking information on that subject before making a decision.

MR. GAFFNEY: I would like to go one step further on that question that you asked about the trucks from out-of-state running over Highway 25, and the number of them that you encounter in coming down to the Convention. It isn't generally known, Mr. Dwyer, but it's no secret, that because of the gasoline tax rate in the State of New Jersey, as compared to all the surrounding states, many, many large truck operators terminal their equipment in New Jersey for the sole purpose of putting gas into it, and those out-of-state trucks, strange as it may seem, when they gas up in New Jersey, are paying a tremendous gasoline tax.

MR. DWYER: Well, I'm going back in memory now to the darkest days, say 1930 to '31, which were coincident with the construction of the Pulaski Skyway. At that time we had available the facilities that might have been subjected to a toll rate and helped considerably in that hour of crisis. But there was great resistance on the part of many of the motor users and certain interests against even a nominal assessment which might have contributed to the payment of that great improvement, which adds a great deal to the economic benefit of the trucking interests. The tunnels are not free; the George Washington Bridge and the Port Authority Bridge are not free, and yet we cause to be constructed about a 4½-mile Skyway, and we derive no benefit from it at all. We could have done it as a temporary measure. But there was a great resistance on the part of these, well, I'll say "special interests," to avoid the possibility of a toll.

MR. GAFFNEY: I was not engaged in this work in 1931 and therefore am not familiar with what took place so far as the activities of the "special interests" that you referred to are concerned. But I can tell you, Mr. Dwyer, that the thing that settled the question of a toll on the Pulaski Skyway was the Federal Government when they finally stepped in and said, "Here, we put money into this; there can

be no tolls on the Pulaski Skyway." That was the thing that finally settled that.

MR. DWYER: The trucking interests got no benefit from the Pulaski Skyway, only the motorist—the pleasure motorist.

MR. GAFFNEY: That's right.

CHAIRMAN: Thank you very much, Mr. Gaffney.

MR. RAFFERTY: We have another witness, but Senator Read is obliged to leave at the moment and Mr. Murray will assume the chair; he is the Vice-Chairman of the Committee.

VICE-CHAIRMAN FRANK J. MURRAY: Mr. Gaffney, have you any idea about the exact annual amount—I don't mean in the present year, but I mean over a period of normal years—that is spent for the construction and maintenance of roads, other than monies that come from the State; that is, by cities and counties and other municipalities, other than the part which comes from the Highway Fund to counties and towns.

MR. GAFFNEY: No, Mr. Murray, I do not have any figures on the annual amount of money spent for city, so-called city streets and local roads. That is what you are referring to, is that right?

VICE-CHAIRMAN: Other than what comes from the State Highway Fund?

MR. GAFFNEY: I do not.

VICE-CHAIRMAN: If I understand the philosophy of your argument, it is that the motorists, those who own or operate motor vehicles, have a vested right to see that the money which they pay as license fees and motor fuel taxes shall be devoted exclusively to roads. Is that correct?

MR. GAFFNEY: That's correct, at the state level.

VICE-CHAIRMAN: Well, now, how about the resident, the taxpayer of this State, who is neither a motor vehicle owner nor a motor vehicle operator, who must pay the taxes for the city, county and municipal streets, the building and repair of them—what about his situation, to follow your argument to a conclusion? He is contributing to the roads so that they may be used by the operator and owner of motor vehicles, isn't he?

MR. GAFFNEY: That's correct, Mr. Murray. I'd like to say in answer to that question that before we had automobiles we had roads, we had city streets. We have always had to have them. And this matter of a state highway system has no bearing on local roads and city streets because government, at the local level, has the responsibility of furnishing city streets and local roads for the convenience and the service performed in the delivery of commodities and merchandise that comes to the property owners along those streets. I'd just like to follow that up and say that wherever a city, or a borough, or a township opens up a development and is required to

build a so-called local road, the value of the properties along that road immediately increase, so there comes in the form of a real estate tax to the local government an increase more than enough to take care of the services furnished by the local government in the form of police and fire protection and other services required of local government.

VICE-CHAIRMAN: You will admit that the great increase in the number of automobiles and traffic has required a more expensive type of street pavement in cities and municipalities and a far greater increase in the cost of maintenance of streets.

MR. GAFFNEY: Which, by the same token, Mr. Murray, has further increased the value of the properties along those roads.

VICE-CHAIRMAN: I'm just trying, if I can, to think your proposition through, that if the motorist who pays the taxes has a vested right in limiting the use of the taxes to roads, then why shouldn't he pay for all the roads he uses? Why should anyone who doesn't operate a motor vehicle or own one, why should he contribute to the construction or maintenance of any roads? Now, that seems to me to be a logical conclusion to your position.

MR. GAFFNEY: No, sir, because as I said before, a person who lives on a city street or a local road that has been built and is maintained by local government, enjoys the services that that road has opened up to him—for the mail deliveries, for deliveries from the grocery store or the butcher, for the convenient access to his home for visitors. He should share a portion of that burden, even though he doesn't operate an automobile.

VICE-CHAIRMAN: Does he enjoy those benefits any more than the man who operates and owns an automobile?

MR. GAFFNEY: I can't say that he does, no.

MR. LIGHTNER: In response to Mr. Murray's question, you referred to the use of this proposed dedicated fund for road construction and maintenance at the state level. Mr. Nixon was a witness this afternoon, speaking on behalf of the Grange. I believe you heard his testimony?

MR. GAFFNEY: I did.

MR. LIGHTNER: And while I do not mean to confine his testimony to only one point, yet I understood him to stress the importance of monies for farm roads which are now dirt roads, or definitely unimproved roads, far off from the main highways, but leading to farms of the State.

MR. GAFFNEY: That's right.

MR. LIGHTNER: Am I correct in understanding that roads of that character would not be roads to be improved at the state level, using the term that I understood you to use?

MR. GAFFNEY: Mr. Lightner, I pointed out in my talk that

under the present state highway program there is a specific amount of money dedicated each year to townships and boroughs throughout the State. There is likewise a specific amount dedicated to counties throughout the State. You find that through the rural counties of the State, the so-called farm-to-market, or secondary roads, are for the most part under the supervision of the county boards of freeholders. It is their responsibility. And you will find that the state monies that go to each of them from the invisible Highway Fund now is put into those secondary farm-to-market roads.

MR. RAFFERTY: They are called subventions, are they not?

MR. GAFFNEY: Yes, subventions that go to the townships and counties annually. That amounts now, under the new program, to about \$12,500,000 a year.

MR. LIGHTNER: The amount of that subvention and the point, the level, to which this subvention would reach, would be determined from year to year by the Legislature, under the constitutional provision that you have proposed?

MR. GAFFNEY: The constitutional provision that we propose in no way affects any acts of the Legislature as long as the monies that are segregated by the Legislature go into highways.

MR. LIGHTNER: In other words, the Legislature, under the constitutional proposal which you are advocating, would be perfectly free to take the entire amount of the so-called dedicated fund and devote it to the back-country roads through this subvention method, if that seemed right to the Legislature?

MR. GAFFNEY: If that seemed right to the Legislature, I'm afraid I must confess that they could do it. I don't think that we will ever see that day, though, sir.

MR. LIGHTNER: I was asking the question because you seemed to be unwilling to entrust to the Legislature any discretion as to the amount of money which it would appropriate from these funds for the parkways and the main highways of the State.

MR. GAFFNEY: I don't follow you on that, sir. Will you repeat that?

MR. LIGHTNER: Well, isn't that the reason for the dedicated fund—that you are unwilling to allow the Legislature to have a free hand in determining the amount of money to be used for roads?

MR. GAFFNEY: In the light of past experiences, yes, sir.

MR. LIGHTNER: I'd like to ask another question, Mr. Chairman. The present revenues from these special taxes, I understood you to state, were now running in the neighborhood of 55 or 56 million dollars a year?

MR. GAFFNEY: That's right.

MR. LIGHTNER: And is increasing steadily?

MR. GAFFNEY: Yes.

MR. LIGHTNER: So, with the increased number of automobiles and their use, that fund is likely to rise rather than fall.

MR. GAFFNEY: That is correct.

MR. LIGHTNER: And you visualize, do you not, a time when the sum thus produced would, at the existing tax rates, be in excess of the amount of money which it would be wise and desirable to devote to the sole purpose of roads?

MR. GAFFNEY: That is a possibility.

MR. LIGHTNER: And at that time the correct thing would be to reduce the tax on gasoline.

MR. GAFFNEY: On highway users, by whatever method the Legislature may deem wise at that time.

MR. LIGHTNER: And the effect of that would then be that gasoline, let us say, would have a special exemption from taxation which would not apply to other possible sources of excise taxes. In other words, in order to raise funds for the support of other worthy objects of state funds, such as schools, the State Legislature, in its wisdom, may see fit to impose a variety of excise taxes—sales taxes, whether general or special—that gasoline would be exempt from, and an excise tax on gasoline for other purposes would be unconstitutional under this provision, would it not?

MR. GAFFNEY: That's right. I would like to point out to you now, Mr. Lightner, as long as you mentioned the possibility of sales taxes, either general or special, that there is presently on such an important commodity as gasoline a 30 per cent sales tax, right now. And we throw our arms up in horror the moment anyone mentions a sales tax on anything else at one or two per cent, and on commodities that are not nearly as important to the welfare of our State and our nation as gasoline.

MR. LIGHTNER: Reverting back to the question which Mrs. Streeter asked, which she referred to as having a rather facetious element to it, may I ask you whether you can tell me what the rate of taxation is on liquor?

MR. GAFFNEY: I haven't any idea, but I can see no comparison.

MR. LIGHTNER: I was merely referring to the rate.

MR. GAFFNEY: I haven't the slightest idea. Let me be facetious for a minute and say this to you and to the other members of the Committee—it is the State's responsibility to furnish a system of highways, and for that the people pay in gasoline taxes and registration fees. It goes back to the fundamental; it is the State's responsibility to do this, for the very welfare of the State. But because they might inaugurate a tax on cigarettes, the State would not be re-

quired to furnish the man with an easy chair in his living room to smoke that cigarette, nor would they be required to furnish the bar for him to consume his liquor that they might place a tax on.

MR. LIGHTNER: You speak of cigarettes. The thing that I point out is that there are certain items of merchandising which, in the judgment of our legislators throughout the nation, generally have been found to be particularly desirable as objects of excise or sales taxes, cigarettes being one of them. The total tax levied on cigarettes is, I believe, a higher percentage of the retail sales price for a package of cigarettes than is the case of the retail sales tax on a gallon of gasoline.

One of the interesting features of this proposed dedicated fund is that having dedicated money in the manner that is proposed, you have not merely set aside a certain amount of money from current tax revenues for a certain objective, but you have taken a particular commodity and have embedded in the Constitution a prohibition against an excise tax on that commodity for the purpose of raising money for any other state purpose. While it might be argued that the needs of the highways are such now that that tax should be at as high a rate as that commodity can stand, yet I understand that you visualize a decline in the need for that tax money for that purpose. But you would embed in the Constitution a prohibition against an excise tax on that commodity for any other purpose, no matter how worthy it might be.

MR. GAFFNEY: My answer to that question is, yes. I would like to say I did not visualize that we may get to the point where we need no further highway construction. I didn't say that. I said, if that situation did arise. You asked me—

MR. LIGHTNER: I did not refer to a time of no further highway construction. I did refer to a time when the legitimate needs of the highways might very well be less than the productivity at that time of these taxes. It is well known that the more highways we have, the bigger, better and broader highways we have, the more they are used, the more mileage there is, the more gasoline is consumed and the greater the annual amount of revenue from it. It would seem to me that the utilization of that revenue for legitimate highway purposes is bound to cross the productivity of the tax at some time, and the tax productivity will continue to rise. The need for the tax revenue may, I hope, be expected to diminish, and at that time your constitutional provision would have either forced the State into a program of waste, such as Mr. Dwyer mentioned, or a reduction of taxes. When that time comes, the dedicated funds would have the effect of having embedded in the Constitution an exemption from taxation.

MR. GAFFNEY: That's right. And we stand on the principle

that the gasoline tax and the motor vehicle registration and license fees were never inaugurated as a general state tax. They are a benefit tax for a specific purpose. The original law which inaugurated them so stated, and inasmuch as that principle has been recognized in our original law, and by the citizens of 19 states, our appeal to you members of this Committee is, let the people of the State of New Jersey decide this question as they have in so many other states.

MR. LIGHTNER: You wouldn't argue that we should go with a minority of the states, simply because they are a minority, would you? That is merely a comment on the number 19.

MR. GAFFNEY: Well, I have heard and have read in the paper—

MR. LIGHTNER: Seriously, Mr. Gaffney, every time that we buy a gallon of gasoline for our automobile, we pay a federal tax as well as a state tax, do we not?

MR. GAFFNEY: That is correct—a federal tax of 1½ cents a gallon and a state tax of three cents a gallon.

MR. LIGHTNER: And that federal tax of 1½ cents a gallon is used for what purpose?

MR. GAFFNEY: That is a general emergency tax of the Federal Government. When it was inaugurated in 1932 it was stated, by the Ways and Means Committee of the House of Representatives, that the federal gasoline tax was an emergency tax and would be enacted for one year, but unfortunately it has been re-enacted each year, and since its inauguration has been increased 50 per cent.

MR. LIGHTNER: And that is an excise tax raised for the general support of the Federal Government?

MR. GAFFNEY: That is correct. It has no bearing on and no connection with the federal aid highway program.

MR. LIGHTNER: And that is the same type of excise tax that I'm referring to as a possible need of the State for other state purposes. I emphasize a *possible* need of the State. I'm not arguing the point; I'm seeking information. As I understand the proposal that you have submitted to this Committee, it creates an exemption of gasoline—in fact, an exemption also of motor vehicles—from taxes for the general support of the State, and that exemption would continue when the productivity of the taxes at the present rate reached a point where it was in excess of the needs for which you speak.

MR. GAFFNEY: That's right. Excise taxes generally are looked upon as taxes that are assessed by the government for the general support of government. It naturally follows, then, and it must be assumed, that all of the people pay the excise taxes. We feel that the highway users group, in all its phases, is a special group of taxpayers and therefore should not be burdened with the general cost of State

Government no matter what the emergency may be, because they do pay all of the other taxes.

MR. LIGHTNER: I would like to correct one of your statements, Mr. Gaffney. Excise taxes are not paid by all of the people. They are paid by the people who purchase or use the particular commodities or other services. It brings those individuals within the scope of the excise tax. A person who is not smoking or purchasing cigarettes, obviously does not pay the excise tax on cigarettes, just as an illustration.

MR. GAFFNEY: Well, the point that I was trying to make on that, Mr. Lightner, was that when excise taxes are inaugurated by any government, at no matter what level, they are looked upon as a general tax.

MR. LIGHTNER: They are not a general tax; they are a tax on a particular thing that is subject to that excise—

MR. GAFFNEY: But not for a specific purpose—that is the point I'm trying to make, not for a specific purpose. Therefore, it naturally follows that it is a general governmental tax.

MR. LIGHTNER: And my point is that you single out motor vehicles and gasoline and exempt them from any excise tax for general governmental purposes.

MR. GAFFNEY: That is correct. We stand on the principle that they are a benefit tax.

MR. LIGHTNER: And you would embed that in the Constitution for as long a time as this Constitution which we hope to submit to the people may be in force.

MR. GAFFNEY: We hope that the people of New Jersey will have the opportunity to make the decision on that particular issue. It has been one of controversy since 1930, and we feel that the people are entitled to that opportunity.

VICE-CHAIRMAN: Mr. Gaffney, isn't it true that motor vehicles, that automobiles were exempt from personal property taxes some years ago?

MR. GAFFNEY: When the registration fees were inaugurated at the state level. That is correct, sir.

VICE-CHAIRMAN: Wasn't that presented as a compensation to motor vehicle owners in view of the fact that they paid license fees? I am told by one of the assessors of the State who appeared before our Committee that the municipalities lost a revenue of \$13,000,000 from that one source, because the revenue now goes wholly to the State, and that the intention was to compensate motor vehicle owners for paying a license tax.

Now, you have used the word "benefit tax." It seems to be your idea that this tax, these motor vehicle license fees, are a benefit for

only a certain part of the people of the State, and not for all the people of the State. Is that your view?

MR. GAFFNEY: Not entirely, because highway transportation itself contributes to the welfare of all of the people of the State, but the users of the highway, in order to permit the State to construct for their use a system of highways, inaugurated these taxes. We look upon them in that light as benefit taxes.

VICE-CHAIRMAN: You would not agree that if the motor vehicle owner and operator has a right to have all the fees and taxes paid by him used exclusively on the roads he uses, therefore he should pay for all roads, and for the maintenance of all roads.

MR. GAFFNEY: Coming back to the city streets again?

VICE-CHAIRMAN: Right.

MR. GAFFNEY: No, I won't agree with that, sir.

VICE-CHAIRMAN: You wouldn't agree that that's a logical conclusion to your argument?

MR. GAFFNEY: No, I do not.

MR. DWYER: Mr. Gaffney, dealing with the human being, as we recognize him, being part of that great family, can you visualize a collector of taxes—and that is what you make the Highway Commissioner, a collector of taxes—gleefully anticipating a great spending orgy, I would say, advisedly, simply because he gets the money. He gets it and, therefore, he spends it. That has nothing to do with scientific planning. Here it comes in. Well, what will we do about it? Well, we'll go out and have a good time on highway construction!

I'm in entire sympathy with this secondary road improvement. I have ridden over nearly every acre in the State of New Jersey in the last ten years, and the toll in broken springs is something I wouldn't want to confess here. I have a place up in Sussex County now, and I tried to negotiate some of the mountain roads up there, and I tell you they are in deplorable condition. I think the Grange has a very great right to pray for a lot of relief, not only for the purpose of conserving delivery vehicles or trucks, but saving themselves from physical destruction because of the condition of some of the secondary roads. You would exclude them from any benefits because, when you lock this money up and embed it in the Constitution, you say to them, under the scheme of things as you present it today, that these roads shall remain roads filled with mud holes and rocks and all the other conditions that you find in these rural roads. Now, he is excluded from any of the benefits of that simply because he is not recognized by you as an essential contributor to our economic welfare, when he brings his vegetables or his eggs or his chickens or his milk to market.

MR. GAFFNEY: Mr. Dwyer, the purpose of the subventions

from the State Highway Fund to townships and counties is to take care of the secondary road system of the State. I don't see how anyone could construe our position as being opposed to that. Now I say to you—

MR. DWYER: I may have misunderstood you; you said highways at the *state* level.

MR. GAFFNEY: I meant control of the fund at the state level.

MR. DWYER: Oh, that's different. We understand each other now.

MR. GAFFNEY: Now, I say because of the fact that the secondary road system is in such bad shape—and incidentally there are some 6,800 miles of dirt roads in the State of New Jersey, entirely unimproved—because they are in that condition, if the Highway Fund were dedicated and the state highway program reached a point where they had all the money they needed and there was still some, it would be within the province of the Legislature, and of this constitutional amendment, to further increase subventions either to counties or to municipalities or to townships, as long as the money went into the road system of the State. So there is even under this proposal the possibility that in the future greater funds in the form of subventions would go to counties and townships and cities. I'd like to point out that this year, for the first time, under the highway program \$5,000,000 of highway funds have gone directly into the urban areas and cities of our State.

MR. ELMER H. WENE: Is that to continue in other years, or is that just to make up some other deficit?

MR. GAFFNEY: Part of that, of course, is under the federal aid program. The formula as set forth in the federal aid program calls for a payment of \$9,433,000 a year to New Jersey, \$5,000,000 of which goes directly into cities and urban areas.

MR. RAFFERTY: Do you have a question, Mrs. Streeter?

MRS. STREETER: No, sir. You must be glad to hear that!

I was going to ask the Chairman, since you have been very patient and we have asked you a great many questions, that you might be excused now. I think we understand your point of view about these questions.

MR. GAFFNEY: Thank you, Colonel. I'd just like to say one thing before I close. I'd like to say that we had represented here today the AAA Automobile Clubs of New Jersey. I'd like to further say that because we were limited as to the number of speakers, that the Keystone Automobile Club, and the Automobile Legal Association (ALA) joined with us in this plea for a constitutional amendment to dedicate highway funds.

I want to sincerely thank the members of the Committee for the courtesy and the privilege of appearing here.

VICE-CHAIRMAN: I thank you, Mr. Gaffney.

MR. RAFFERTY: The final witness of the day, Mr. James Smith of the New Jersey State League of Municipalities, desires to destroy everything that has been said heretofore. Mr. Smith says that he will speak not more than ten minutes to do this job.

MR. JAMES J. SMITH: Thank you, Mr. Rafferty, for the compliment. It is quite a large order, but maybe it's not as large as it sounds. I think the Committee has a lot of patience and endurance, so I'll cut down even what I have written here to Senator Read. I have copies of that for the committee. (*Reading*):

"IN RE OPPOSITION TO DEDICATION OF HIGHWAY FUNDS

The New Jersey State League of Municipalities is very definitely opposed to any proposal to provide for the dedication of highway funds in the State Constitution.

We maintain there is no need for the dedication of highway funds if we realistically appraise the present situation. The record indicates the revenue derived from motor vehicle and gasoline taxes is in excess of the amount of money needed for the maintenance of highways. The emphasis is generally placed upon state as distinct from county and municipal roads. A road mileage survey as of July 1, 1943 indicates that the total road mileage of New Jersey is 27,990.1 miles. Of this total, only 1,687.2 are state highways; counties account for 6,266.5, and the balance, 20,036.4 miles, are municipal roads. It is safe to say the New Jersey motor vehicle taxpayer uses municipal and county roads more than state highways. The 1947 Legislature recognized the municipal need for the use of these so-called highway funds.

MUNICIPAL MOTOR VEHICLE SERVICES

The motor vehicle brought with it, in addition to the necessity for roads, other costs of local government incident to the use of the motor vehicle. The following expenses fall directly on the municipality and are paid from property taxes levied and collected locally: municipal traffic control, including the salaries of police and other public employees pro-rated according to the time spent directing traffic; expenditure for maintenance and operation of traffic lights, motorized and other equipment used principally in traffic regulation; the painting of curbing and parking stalls; and the cost of equipment purchased for traffic regulation; the need for opening new local roads, widening existing roads and providing municipal parking spaces.

A survey in 1945 disclosed that 288 municipalities representing 84 per cent of the State's population expended a total of approximately \$5,500,000 for traffic control purposes alone.

No invention of modern times has brought in its wake more problems of government than the motor vehicle. To establish the principle that taxes received from motor vehicles should be used exclusively for the benefit of the motor vehicle taxpayer is to introduce a principle that is unknown in relation to other taxes levied in this State. If all taxes now levied were dedicated to serve exclusively those who pay the tax, our tax structure would collapse. If that principle were followed the property tax would be used not only for the services of local government but it would also benefit the property itself, including the maintenance and repair of such property. The liquor tax [as has been facetiously referred to today] might logically be dedicated to Alcoholics Anonymous or institutions that take care of alcoholics, since they are the people who pay a good portion of the tax.

ONE STATE FUND

The State Highway Department, until January 1, 1944, had a fiscal year and a budget of its own, separate from the State. On July 1, 1945 the State Highway Department budget became part of the state budget, so

that there is but one state budget and one state fund since 1945. To dedicate highway funds would only serve to defeat the purpose achieved by the creation of a single state fund.

STATE GAS TAX REPLACES LOCAL PROPERTY TAX

It will be argued that when the gasoline tax was instituted the motor vehicle owner was induced to accept this new tax on the pledge that the revenue raised would be used solely for highway purposes. It is well to emphasize that prior to the levy of this gasoline tax, motor vehicles were assessed as property and the tax collected locally for local purposes. When the gasoline tax was instituted in 1927 the Legislature in that same year completely exempted motor vehicles from the property tax, and that exemption still exists today. It is interesting to note that the amount collected in 1928 under the new gasoline tax amounted to \$8,470,335. The motor vehicle property tax amounted to \$16,000,000, so that through the exemption granted, the motor vehicle owner saved approximately \$7,500,000. The fact is, the gasoline tax was a substitute for a property tax theretofore levied. The revenue from the property tax went directly to the municipality; the gasoline tax was paid to the State. The loss under the exemption at the local level was at the expense of the local taxpayer whose property taxes were increased to make up for the local loss of revenue.

In addition to this loss of local revenue it is pertinent to point out that according to the 1945 survey referred to above, local property taxes amounting to \$5,500,000 annually were diverted to meet local traffic needs incident to motor vehicles to which the gasoline and motor vehicle taxes contributed nothing.

FEDERAL AID PROGRAM

It is true the diversion of highway funds to other purposes carries with it a penalty under the provisions of the federal aid program, and New Jersey has suffered financial loss because of such diversion. This fact of itself is no compelling argument for the dedication of highway funds.

We maintain that the future development of our highway system should not be predicated on a dole or hand-out from the Federal Government. Our position should be that the gasoline tax field properly belongs to the states and municipalities. The relinquishment of gasoline revenue by the Federal Government will eliminate the need for federal aid to the states. The federal highway system is but a combination of state, county and local highways built and maintained by the states and political subdivisions thereof. While several states have such provisions in their constitutions indicating a willingness to dedicate highway funds, it is fair to assume that this trend is brought about either by necessity or for the purpose of qualifying as a participant in the federal grants for state and urban highways.

It should be kept in mind that federal grants-in-aid derive from a *legislative program* to meet a temporary need and may be abolished at any time by the Congress. A provision in our State Constitution, however, would be a permanent mandate that might not adequately or properly meet our future needs, problems or conditions. We must seriously and carefully consider the need of this revenue in relation to our whole tax structure. The fact that other states have such a constitutional provision is by no means conclusive that New Jersey should follow their lead."

And incident to that, I might say that in some of those states that have dedicated highway funds, there are super-imposed municipal gas taxes that are not dedicated, of course, to the state highways. There are in the United States, according to the recent record that I read, 424 municipalities that are now levying a municipal gasoline tax. (*Continues reading*):

"DIVERSION JUSTIFIED"

It will be stated that approximately \$150,000,000 of highway funds have been diverted between the years of 1932 and 1945.

We are reminded that the original dedication of highway funds by the act of 1927 was a *legislative enactment*. A Legislature enacts laws to meet current needs. It developed during the depression years that the social welfare of the citizens of the State required that certain highway funds be diverted for unemployment relief which was more necessary at that time than the extension of our highway system. It was generally conceded that it was a very wise thing to do, and approximately \$65,000,000 was appropriated for relief.

We do not know what lies ahead. It is quite possible that in the future the people of the State of New Jersey through their legislators would again decide to use highway funds and other funds for urgent needs. If such an emergency should arise it would be most unfortunate for us to find that to meet a pressing need would require an amendment to the State Constitution. Emergencies cannot be met or anticipated by a constitutional provision.

The availability of tax revenue should be flexible at all times, to furnish the services of government and meet our social requirements as they arise. Let us limit our constitutional provision to a tax clause which provides for the assessment of taxes."

VICE-CHAIRMAN: Mr. Smith, do you know off-hand what proportion of the total state revenue is represented by highway taxes and motor vehicle license fees?

MR. SMITH: No, I can't say that I do. I presume you have all those statistics in that memorandum presented to you by Mr. Gaffney. I didn't bother to get up any statistics, because I'm quite sure he has covered the ground very thoroughly in that memorandum.

VICE-CHAIRMAN: Any questions of Mr. Smith?

(Silence)

VICE-CHAIRMAN: We thank you Mr. Smith.

MR. RAFFERTY: I'd like to announce that when the meeting adjourns this afternoon, it will be until 10:30 on next Tuesday morning, Room 201 of the Gymnasium Building. At that time Commissioner Zink will again appear before the Committee, and such other witnesses from the State Taxation and Finance Department as Commissioner Zink may care to present.

VICE-CHAIRMAN: The meeting will now adjourn.

(The session adjourned at 5:00 P. M.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 15, 1947

(Morning session)

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

The Committee on Taxation and Finance convened in the Rutgers University Gymnasium, New Brunswick, New Jersey.

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The meeting will come to order. I believe the first person to address the Committee this morning is Mr. Homer C. Zink, Commissioner of Taxation and Finance. Mr. Zink, you may take the speaker's stand.

MR. HOMER C. ZINK: *(Reading):*

"To the Committee on Taxation and Finance:

Mr. Chairman and other members:

When, at your request, I appeared before this Committee three weeks ago, I spoke briefly and quite informally. As a state fiscal officer, I stressed, primarily, the vital importance of a flexible Constitution.

I did not realize then that the members of this Committee, and other delegates, too, had already determined to write a short, simple, elastic document. You will easily understand how relieved I am, as Tax Commissioner, to sense that this Convention will draft a charter broad enough to permit the Legislature, in the years to come, to do those things which may be necessary, under ever-changing conditions, to meet the ever-increasing needs of the people.

I told you last month that I had no revolutionary ideas as to tax clauses or any other clauses for the new Constitution. I stated in June, as I do now, my awareness of the difficulties resulting from the 'true value' clause of paragraph 12, Section VII, Article IV, of the old Constitution. I stated, nevertheless, that I would rather have that clause unchanged than see it replaced by some unworkable provision, too restrictive on the one hand or too uncertain on the other. It seems clear, now, that there is no need for concern about the ultimate treatment of this clause.

Last week I recommended that paragraphs 19 and 20, Article I, and paragraphs 2, 3, 4, and 6, Section VI, Article IV, be retained. I do not say that no change should be made in the phraseology of these paragraphs, but, despite their somewhat quaint language, I again say they have been a real bulwark of the State's credit, which is widely recognized as being unusually strong. These provisions have helped maintain New Jersey's essential financial soundness throughout the recent years which saw the darkest days of a deep depression, the impact of the greatest war the world has ever known, and the approach of tremendous reconstruction and post-war problems. The State's safe passage through the troubled, dangerous waters since 1930 is a silent tribute to these fiscal provisions of the present Constitution.

Admittedly, our Constitution is far from perfect, or you would not now be engaged in the task of rewriting it. Without doubt, some changes should be made in the money provisions of a charter adopted in 1844, when New Jersey was largely agricultural, and when the annual cost of running the State was something like \$100,000. No one then living could have foreseen that this would become one of the greatest industrial areas in the world and that our annual budget would be in excess of \$150,000,000 today, or 1,500 times what it was in 1844.

The fact that conditions have changed so radically since the present Constitution was written may be taken as proof that equally great changes can be expected in the future. Therefore, no one will deny that the State's Constitution should be so written as to permit future generations to adapt it to developments which may be even more startling than those of the past hundred years. It is to be assumed that there will be a clause permitting reasonable revision, but the Constitution itself will be based on conditions as of today, with a proper perspective of increased needs for additional services. This is inevitable because of the social point of view now prevailing, not only in New Jersey, but throughout the nation.

Now, specifically with respect to a clause or clauses to replace paragraph 12, Section VII, Article IV, I respectfully submit the following for your consideration:

'Property shall be assessed for taxes under general laws, and by uniform rules, according to classifications and standards of value to be established by law. Assessments when made on an *ad valorem* basis shall not exceed the true value of the property assessed.'

Of course, I do not insist that these exact words be used, but I strongly urge acceptance of the philosophy they express. You have heard, at some length, about this paragraph from Dr. Sly, who told you why he advocates it. I join him in this advocacy, as do others who have had practical experience in the administration of state taxes. It should be noted, in passing, that the wording of this paragraph is almost identical with that endorsed by the New Jersey State League of Municipalities in 1944. This organization is much interested in railroad taxation, by reason of Class II or local railroad property taxes. The League now seeks retention of the present 'true value' clause of paragraph 12, but would add a sentence:

'The burden of direct taxation upon all real property not exempted shall be equal.'

Such action would be a step in the wrong direction. Indeed, a provision of this kind would lock the taxing powers of the State in a vise, and should not even be considered. I believe the Legislature of New Jersey can be trusted to write fair and reasonable tax statutes under such a constitutional clause as Dr. Sly has suggested.

According to constitutional authorities, 'that constitution is best which says least about taxation.' Warmly subscribing to that belief, I favor a very short exemption clause, such as this: '*Exemptions from taxation may be granted by general laws.*' However, I am willing to make any reasonable concession, so long as the treatment of an exemption clause involves matters of policy only, and not matters of principle. I do not quarrel with those who believe the traditional religious and charitable exemptions of property should be recognized in the revised Constitution. For that purpose, the following provision has been used in the constitutions of other states:

'Public property, used for public purposes, and property used exclusively for religious, charitable, educational or burial purposes, and not held or used for profit, shall be exempt.'

If we are not to have a short clause, stating merely that exemptions may be granted by general laws, I am of the opinion that consideration should also be given to a provision somewhat as follows:

'Exemption from taxation may be granted, by general laws, to persons while serving honorably and to those persons who have served or shall have served honorably, in active service in any branch of the military or naval forces of the United States in time of war.'

As Commissioner of Taxation and Finance, Director of the Division of

Budget and Accounting, and Acting Director of the Division of Taxation. I am concerned not alone with the assessment of taxes but with their collection. As Mr. Aaron Neeld so well says: 'Government cannot be run on assessments alone.' Assessments should not be impaired and they must be translated into actual cash revenue."

That means that assessments should not be impaired by improvident exemptions, and assessments should be so levied as to make possible the collection of taxes, because only cash collected from taxes will furnish services.

CHAIRMAN: Are there any questions the Committee would like to ask Commissioner Zink?

MRS. RUTH C. STREETER: Mr. Zink, earlier in the sessions we heard testimony by various persons that any changes in the tax clause might lead to a great deal of litigation. What is your opinion on that subject in reference to these suggested changes? Do you think it would increase litigation or be a hindrance in that way?

MR. ZINK: Without a doubt, any change in the tax clause will result in some litigation. But it is hard to conceive how there could possibly be more litigation involving taxes than we have had in the last 25 years. That is perhaps a broad statement, but I will stand on it.

CHAIRMAN: Commissioner Zink, on that line, as I understand it, the present tax clause says nothing about classification, but the courts have said we can classify property according to certain classes. Using the word classification as you have suggested it attempts to define what the court have already said, rather than something new?

MR. ZINK: That is true.

CHAIRMAN: Any further questions? Senator Milton?

MR. JOHN MILTON: Commissioner Zink, does your present attitude reflect a change from the position you took when you originally appeared before this Committee?

MR. ZINK: When I appeared here three weeks ago, I said I would rather see the present tax clause continued than to see it replaced by what I called a—I think I used the word "erratic" clause. I have in mind replacement by a clause that might, as I say here, be too restrictive on the one hand or too uncertain on the other. I believe the testimony taken at the first hearing will show that is what I said. When I was on the stand I think that question did not come up. But after I had finished, two or three others in the Tax Department spoke and some of them advocated replacement of the true value clause. Then I think someone asked me where I stood on that and I said, as I have just now said, that I would rather see it retained than to have it replaced by some erratic or unsatisfactory clause.

MR. MILTON: Do you subscribe to the view that the present constitutional language would not permit of the passing, validly, of a graduated income tax law?

MR. ZINK: I would never be sure of that. I have said that in my opinion the present clause will permit an income tax. My own feeling is that it might even permit a graduated income tax, but I am not sure of that, and no one else seems to be sure.

MR. MILTON: There are those, however, who do believe that the present language would not permit a graduated income tax law?

MR. ZINK: That is unquestionably true. In that connection, I noted with interest today that at the Conference of Governors out in the West it has been suggested that all the states depart from income taxes and leave the field to the Federal Government.

MR. MILTON C. LIGHTNER: Mr. Zink, are you familiar with the literature of the New Jersey Educational Association that was circulated on this subject?

MR. ZINK: Yes, sir. Some of it.

MR. MILTON: Before asking you this next question, I want to say this to you, and to you through the Committee: I am in receipt of a letter from the New Jersey Educational Association dated June 20. I wrote the secretary of that association because of certain language which appeared in the letter.

In brief, the language stated that there was—I have it here, so I will quote it exactly. It is an explanatory statement which accompanied the suggested draft or suggested change in the Constitution and which suggested change is substantially the same as the one you now advocate. The explanatory statement is this (*reading*):

“There is some doubt at the present time concerning the right of the Legislature to tax some resources in the State which would pay their fair share of the cost of State Government.

The actual forms of wealth in New Jersey have varied considerably over the generations in their quantity and ability to support State Government financially. The Legislature and the people of the State should be free to tax the wealth in the State in a flexible manner throughout the years. No form of wealth and no group of New Jersey citizens should be permitted constitutional protection from financial support of State Government. On the other hand, no form of property should be overtaxed because of a constitutional provision.”

As I said, I wrote the secretary of the association inquiring as to what forms of wealth existed in this State which were not subject to taxation, and I received from him this reply which I will abbreviate in the interest of saving time (*reading*):

“With respect to your two questions, Mr. Hipp said to me under date of June 27, it is our understanding that there is considerable doubt that the phrase in the present Constitution will permit the Legislature to vote a graduated income tax. Although we are not at this time taking a stand in favor of such an income tax, we believe that the Legislature should be permitted to vote such a tax at some time in the future if it seems wise for them to do so. We believe that this doubt should be removed and that a statement should be so worded as to permit the Legislature complete flexibility in determining classifications of property and the rate at which they are to be assessed. We believe that constitutional immunity should not be given to people with larger incomes and who have no real

estate or other forms of wealth taxable to any extent by the State or by the local community."

Do you concede then, Mr. Commissioner, that the suggested clause which was advocated by Mr. O'Brien and by Doctor Sly, and seems to have emanated from his brain, would in legal effect enable the Legislature without doubt to pass a valid graduated income tax law?

MR. ZINK: I think so.

MR. MILTON: That's all. Thank you.

CHAIRMAN: Any further questions?

(Silence)

CHAIRMAN: Anything further you desire to say, Commissioner?

MR. ZINK: I think not.

CHAIRMAN: Thank you very much, Commissioner Zink.

Is Walter Darby in the room? I would like to ask a few questions if he will take the stand. I haven't prepared him for saying anything which I want to ask.

MR. WALTER DARBY: Mr. Chairman and members of the Committee: Bill Read is the man who first appointed me to office some 30 years ago, so if he wants to ask me some questions it is up to me to respond.

CHAIRMAN: Mr. Darby, what I mainly wanted to ask is: Two of the provisions of the Constitution referred to us are paragraphs 19 and 20 in Article I. It is the matter of various municipalities not giving any aid to any individuals or corporations. We have had a few very general words in that respect, and knowing that you know about as much or more of the finances of the various municipalities as anyone, I just wondered if you had anything special to say on that clause, or if you have heard anything from any of the municipalities about it?

MR. DARBY: I have nothing to say in this connection except to say that I endorse the provisions of the present Constitution and feel they should not be changed.

CHAIRMAN: You feel that is enough protection to the community?

MR. DARBY: In my experience I haven't heard where those provisions of the Constitution have materially affected any interest.

CHAIRMAN: There is one that comes to my attention, and that is that in some municipalities they exempt—not exempt, but they provide—appropriations to the hospitals for the care, theoretically at least, of the indigent in their jurisdiction. Some of them are now withdrawing that because of an understanding that under paragraph 19 they cannot give any aid or help to the corporation or association.

MR. DARBY: My approach to that matter is simply this: That I know of no provision in the Constitution or in law which would prevent a county from entering into a contract with a hospital to

render service on a *per diem* rate for such indigents as are residents of that county. That is what is being done in many counties today. It is not a question of a donation or a contribution, but payment for services rendered.

CHAIRMAN: In other words, if a city or a county or municipality gives a donation or an appropriation to a hospital, and it can be shown that it pays in part only for the care of those who cannot afford otherwise, it has no constitutional inhibition and it finds no criticism from your department?

MR. DARBY: That is my approach to it.

CHAIRMAN: Would the Committee like to ask Mr. Darby any questions? The point came up from letters I received. There was no request for a hearing. I thought that since Mr. Darby was here I could get that point cleared up. Thank you very much, sir.

MR. JOHN J. RAFFERTY: Mr. Edward W. Kilpatrick, Secretary of the State Federation of District Boards of Education of New Jersey, may take the stand.

MR. EDWARD W. KILPATRICK: Mr. Chairman, ladies and gentlemen of the Committee:

I would like to read the following statement (*reading*):

"Hackettstown, N. J.
July 14, 1947

To: Committee on Taxation and Finance,
Constitutional Convention,
New Brunswick, New Jersey.

FROM: The State Federation of District Boards of Education of N. J.

At the semi-annual meeting of the State Federation of District Boards of Education of New Jersey, held in the State House on June 6, a committee was appointed to request that Article IV, Section VII, paragraph 12 of the present Constitution be amended to read as follows:

'Property shall be assessed for taxation according to classifications and standards of value to be established by law.'

STATEMENT

There is some doubt at the present time concerning the right of the Legislature to tax some resources in the State which would pay their fair share of the cost of State Government.

The actual forms of wealth in New Jersey have varied considerably over the generations in their quantity and ability to support State Government financially. The Legislature and the people of the State should be free to tax the wealth in the State in a flexible manner throughout the years. No form of wealth and no group of New Jersey citizens should be permitted constitutional protection from financial support of State Government. On the other hand, no form of property should be overtaxed because of a constitutional provision.

Respectfully submitted,

Edward W. Kilpatrick, *Secretary*,
State Federation of District Boards of
Education of New Jersey."

In addition to the foregoing, we concur with Commissioner Zink's statement.

CHAIRMAN: Any questions the Committee would like to ask Mr. Kilpatrick?

(Silence)

CHAIRMAN: Thank you very much, Mr. Kilpatrick.

MR. RAFFERTY: Mr. Anthony Daly, tax assessor for the City of New Brunswick, appearing as an individual, desires to speak on the tax clause, and he wishes also to refer to the matter of tax exemption.

CHAIRMAN: We will hear Mr. Daly at this time. Mr. Daly, you may take the stand.

MR. ANTHONY DALY: Mr. Chairman, members of the Committee:

The 1844 Constitution of New Jersey provided that:

"Property shall be assessed for taxes under general laws and by uniform rules according to its true value."

That provision involved only 18 words. I believe the new provision should provide not more than 20 words. I believe that

"Property shall be assessed by the State for taxes under general laws and by uniform rules according to its value."

I say that this provision, if made in our new Constitution, will eliminate so-called privileged groups. It will eliminate the statements of local assessors who are perjuring themselves by stating they have made their assessments in an impartial manner. Every local assessor—and Mr. Darby will bear me out—assesses property according to certain concessions that he grants to special groups. If we are going to have assessments on a uniform basis throughout the State it will have to be done by the State.

On the question of tax exemption, I feel that tax exemption should be confined to property that is constructed or erected by educational or religious or charitable institutions. The gradual withdrawal of millions of dollars of industrial, business and residential property by these associations which are granted tax exemptions works very heavily upon the City of New Brunswick, of which I am one of the local assessors. They have taken industrial property and converted it to educational use; they have taken 40,000 and 50,000 dollar residential property, and they have taken business property. I feel that this gradual withdrawal of ratables is working heavily upon the City of New Brunswick and that a provision should be made in the Constitution that only such property as has been constructed or erected by these institutions shall be granted tax exemptions.

CHAIRMAN: Any questions?

MR. WILLIAM J. DWYER: The special plea of New Brunswick has been presented to this Committee, and it is directed, presumably, at the existing exemption granted to Rutgers. Nothing has

been suggested as to the value *per se* on a *pro tem* basis, as my lawyer friends would say, of Rutgers University to this community as a whole. Assuming that Rutgers should demobilize and remove its grand institution to some other locale, would that in your opinion demoralize the social and economic life of this City of New Brunswick? What contribution do they make to your welfare, economic and social?

MR. DALY: Speaking very truthfully, Rutgers College is an asset to the City of New Brunswick from a business standpoint. It brings in approximately \$2,000,000 of buying power to the businessmen of our city. That is true; it cannot be denied. We say, on the other hand, that Rutgers College is the owner of hundreds of acres of vacant land on which they can quickly construct the type of building which could serve the educational purposes in lieu of their now going out and buying up industrial, business and residential property and putting one or two classes in one or two rooms and using the balance of the building either for occupancy by janitors, or by professors, or by students. We say that those buildings are resulting in a withdrawal of ratables from our city. Why can't they build on the hundreds of acres of vacant land which they are withholding from taxables, instead of buying up new and taxable property on our books?

We admit Rutgers College is an asset to the City of New Brunswick. It always has and always will be to the businessmen, in buying power.

MR. DWYER: The thought that I would like to carry farther is that when there is an acquiring of additional property which becomes exempt because of their ownership or title thereto, is there not some evidence of replacement in the community by buildings that will fill the ordinary needs of the population, residential and business?

MR. DALY: The annual withdrawal of \$200,000 or \$300,000 in ratables by Rutgers College more than overcomes the new construction of ratables. We feel that the purchasing of this land and building by Rutgers College is about equal to the new ratables that are coming into the municipality. We are not able to meet the newly increased cost of government by new ratables because of this tremendous increase in tax exemptions granted to Rutgers College.

MR. DWYER: If my memory serves me correctly, it was suggested by a representative of New Brunswick that Rutgers, having taken on the character of a State University, should be subsidized to an extent by state monies for the properties occupied by the college, in order to compensate the city for the loss in ratables. I ventured the opinion when I first learned of the attitude of New Brunswick that if the State University had a privately managed fire and police

service, bought their water and measured their sewage disposal, that would be a satisfactory way to compensate New Brunswick. Or would you like to see the tax dollar flow into your treasury in lieu of that method of solving the cost of services rendered by the City of New Brunswick to the University?

MR. DALY: I would like to see the University or the State reimburse the City of New Brunswick for the amount of expenditures incurred for benefits that it receives for local service. I don't feel that Rutgers College could be compelled to pay local district school taxes or county taxes. I feel that Rutgers College should be made to pay for the sewage disposal plant. The City of New Brunswick has been compelled by the State to treat their sewage before it enters into the Raritan River. I feel that Rutgers College should be compelled to pay for the police and fire protection. I think those are local services for which Rutgers College or the State should reimburse the City of New Brunswick—for any local service from which it actually receives a benefit. I do not believe that it receives benefits from schools.

MR. DWYER: I am just weighing the cost of one system as against another, where we have maintenance of services, by paying a direct subsidy or tax. . . .

MR. DALY: It would have to be based on the valuation of the college property at the local tax rate of the local governing body. That is exclusive of your local school tax or county tax, which would have to be excluded from the cost.

MR. LIGHTNER: In your opinion does the Legislature, under the present Constitution, have the authority to grant the relief which you feel should be given?

MR. DALY: I don't think it has.

MR. LIGHTNER: Why not?

MR. DALY: I feel that under the present Constitution . . . If we are going to take Mr. Darby's opinion, they could make a donation the same as a municipality; they could enter into a contract with the city. It could make a donation or pay for the services, the same as a county makes a donation to a so-called hospital. It would have to be by contract.

MR. SIGURD A. EMERSON: Mr. Daly, the State of New Jersey has for many years been making an appropriation to Rutgers University, long before it became the State University, on the theory that services were rendered. Don't you think that the State could make an appropriation to New Brunswick on the same consideration?

MR. DALY: It would be part of the state appropriation. In other words, the services rendered by the City of New Brunswick would be included in the state appropriation to Rutgers University.

MR. EMERSON: But you don't think that can be done under the present Constitution?

MR. DALY: I don't think so. I am not a lawyer. That's what I have been told.

MR. EMERSON: It could be done at a matter of fact by an appropriation to the University which could reimburse the city?

MR. DALY: That's right.

MR. LIGHTNER: That could be done under authority of the present Constitution by the Legislature?

MR. DALY: Well, Rutgers College does make a contribution now to the City of New Brunswick, approximately \$10,000 a year, which is not enough to pay for the services received.

MR. LIGHTNER: But the procedure to correct the condition about which you complain is available under authority of the present Constitution? Isn't that right?

MR. DALY: Well, the point is, Rutgers College can withdraw that \$10,000 at any time it sees fit. There is no law compelling it to donate that \$10,000.

MR. EMERSON: There is no law stopping it from increasing it either, is there?

MR. DALY: That's right.

MR. CLYDE W. STRUBLE: Mr. Daly, do you mean that the City of New Brunswick disposes of all the sewage of Rutgers University without charge?

MR. DALY: Yes, sir. It disposes of all the sewage before it empties into the Raritan River. It has to be purified, and Rutgers College empties all its sewage into our sewage disposal plant free of charge.

MR. STRUBLE: That's the most amazing statement I have ever heard. There isn't a privately-owned sewage company in the country that would do a thing like that, and I can't understand why the City of New Brunswick doesn't make a charge.

MR. DALY: I advocated a few years ago that the City of New Brunswick take advantage of a law that was adopted in 1904 that the sewage and water department be consolidated and be operated as one utility, and that Rutgers College would be charged under the utility operation, the same as water. But that was never done.

MR. STRUBLE: The charges on sewage are separate?

MR. DALY: Yes; that is another part of the discrimination. The industrial plants of New Brunswick pay a sewage disposal charge but Rutgers College doesn't pay anything.

MR. LIGHTNER: I would judge from the reply you made to Mayor Struble that the correction of this matter was in the hands of the City of New Brunswick?

MR. DALY: Aside from my own opinion—as I said before, I am

not a lawyer—they could overcome that by operating the sewage disposal plant as a utility, and charging Rutgers College and every other tax exempt property in the State the same as they now charge for water rent.

CHAIRMAN: Any further questions?

(Silence)

CHAIRMAN: Thank you very much, Mr. Daly.

MR. RAFFERTY: I will now call Mr. Russell E. Watson who desires to be heard as a trustee of Rutgers University. Mr. Watson had intended to speak later in the day on this point, but because the matter was brought in by Mr. Daly, Mr. Watson desires to speak at this time on that subject.

CHAIRMAN: Very well, we will hear Mr. Watson.

MR. RUSSELL E. WATSON: Mr. Chairman, Mr. Vice-Chairman, and members of the Committee:

I appear without preparation as a trustee of Rutgers College, the State University of New Jersey, and I desire to speak also as a member of the business and professional community of New Brunswick. I was born in New Brunswick and have lived here or in Highland Park until two years ago when I became an agriculturist and moved to Somerset County. I think I speak with full knowledge and an appreciation of both sides of this controversy to which my good friend, the tax assessor, Mr. Daly, just referred. Judge Rafferty was in error. It was not my intention to speak later in the day. I just happened to be in the room when Mr. Daly spoke and I asked permission to make this brief statement.

True it is, Mayor Struble, that the City of New Brunswick furnishes the State University with the same municipal governmental services that it furnishes to other taxpayers—sewage treatment, garbage collection, I believe, fire protection, the use of the municipal streets—not counting, however, any educational services, because the University has no children who go to school. Trenton furnishes those same services to the State of New Jersey in connection with the state buildings there—state buildings, institutions, agencies of various kinds. The City of New Brunswick furnishes the same governmental services also to the county buildings. So in my opinion, thinking as a trustee of the University and, as I said, as a lifelong resident and part-time voter, and as one of the professional and business community, I would like to balance the advantages against the disadvantages. And that is the phase of the matter to which Mr. Daly has not referred.

Mr. Daly said that the University brings to the business life of the community an annual expenditure of about \$2,000,000. That very much understates the figure. I can't say what the figure is. I knew

at one time. I knew exactly because this is a subject in which, as I said, I have long been interested. Had I been prepared to speak I would have had the exact figure, but I would say that it would treble that. It is certainly some five or six million dollars. Before this state expansion in the University, the University's payroll approached two million dollars, at least more than one and one-half million dollars a year. It was the second largest payroll in the community, exceeded only by that great corporation across the way. More than that, it was a stable payroll. It fluctuated very little, and the great bulk of it was spent in the community because the recipients of those salaries lived here or nearby.

The faculty since then has more than doubled, nearly trebled, and I am quite confident that that amount, the salary payments, would aggregate five million dollars, perhaps more. Also, there are 4,500—more than that, some 4,700 or 4,800 other students here, about 3,500 in the men's colleges and some 1,200 in the women's colleges, all of whom spend substantial sums with the merchants in the community. Solely from the commercial and business viewpoint, the University is an extraordinary asset to the community. In my judgment, it is a matter of dollars and cents. It very much makes well worthwhile the expenditures the city makes for the University.

Mr. Dwyer, I believe there were two elements to your question. You referred not alone to the financial aspects of the problem but you inquired also whether the State University did not bring social advantages to the community, and that I want to stress. I want to stress that even beyond the business and commercial advantages. I think there are about 1,000 persons or so on the faculty of the University now, nearly all of whom, with their families, live here. This group of people, together with the students, participate more or less in the community life, and bring to New Brunswick and to Highland Park, and to this entire area, a cultural value which is inestimable. Without these people—members of the Committee, I am speaking now to my fellow townsmen as well as to this Committee—without these people New Brunswick would be an industrial community. I am not decrying that at all, but it would lack this cultural leaven which the faculty group and the students bring to this community. Not only do they bring this cultural influence, but they participate in all the activities of the community. The President of the University—I don't have to speak for him, you see him here every day—there is hardly a community activity of any consequence in which he does not participate in some way. And so it is with members of the faculty. They are in the community chest drives, they are on the boards of our institutions, they are exceedingly active in all phases of University and community life.

I would like to leave these few words with you. This could be

expanded. Commissioner Daly reverted to the subject. I didn't know he was going to do so. As I said before, my presence here is accidental, but I would like the Committee to know that in my considered judgment, based upon long experience, and being well aware of both sides of the question—I've heard it debated many times—the State University is an asset to New Brunswick and this community, worth many times what it costs in the governmental services, municipal governmental services, which are rendered. New Brunswick would, indeed, be a much inferior community were the University to pick up bag and baggage and depart. I thank you.

MR. EMERSON: Mr. Daly said there is no provision in the Constitution that would make funds available if it should be determined that it's necessary to make a contribution to Rutgers. Do you think there is any change in the Constitution required for that purpose?

MR. WATSON: I meant to speak of that. It is not a constitutional question at all; it's a mere question of policy. Under *chapter 49, Laws of 1945*, the State purchases educational services from this State University which it has created. It is a joint enterprise. The State could, as a part of that appropriation for the purpose of education, include a sum for reimbursement to the City of New Brunswick. No change in the Constitution is required; no statutory change is required. It is a mere matter of policy.

I am not speaking of that. I am resisting the implication which has been left here, that the State University is a burden upon this community. The contrary is the fact.

MR. MILTON: When Mr. Ewing appeared before this Committee a few days ago, my recollection is he said that Rutgers University was the owner of approximately 30 per cent of the ratables of the City of New Brunswick. Would that be about right?

MR. WATSON: Mr. Milton, may I make another statement which your question suggests?

MR. MILTON: Yes, if it's going to answer my question.

MR. WATSON: I'm going to answer your question. It will be answered. I would like to say that the relationship between the commissioners, the governing body, and the University is very pleasant indeed; that whatever controversy there is, is not between the municipality and the University. It is between the municipality and the State.

Now, answering your question. I don't know whether the exemptions are 30 per cent of the total ratables or not. Nobody knows, because owners of property which was taxed are very careful, usually, to see to it, in so far as the law permits, that the assessment has a proper relation to the value of the property. But the exempt property is written up in the tax list and nobody cares what the assessment is. There has never been a careful survey of that made. It

probably should be made, but whether it's 30 per cent or not, Mr. Milton, it is very considerable.

MR. MILTON: I assume it to be 30 per cent. Is it your concept that this expansion of culture should go on indefinitely and without limitations?

MR. WATSON: Well, I'd let the future take care of itself. It can always be dealt with by statute. Up to this time, I'm of that opinion.

MR. MILTON: You perhaps didn't enjoy the advantage of hearing Mr. Ewing say that the City of New Brunswick had struggled futilely to induce the Legislature to pass laws with respect to the subject.

MR. WATSON: I didn't hear Mr. Ewing say it here, but I have heard him say it many times.

MR. MILTON: It is a fact that the Legislature has been appealed to and has not yet seen fit to give credit to the city?

MR. WATSON: That is true. I think the reason is, Mr. Milton, that it presents very serious problems everywhere.

MR. MILTON: And indeed, the appropriation of property for the uses of education and culture might go so far as to exceed 50 or 60 per cent.

MR. WATSON: Of course, that is possible.

MR. MILTON: Have you any suggestion to make to the city fathers as to what they are going to do then about the mundane things of getting taxes to pay for sewer work and water, lights, and policemen and firemen?

MR. WATSON: Remember what I said, Mr. Milton, that these direct money expenditures of the City of New Brunswick, in themselves, provide ratables which are of tremendous value to the city.

MR. MILTON: You said the City of New Brunswick. I think you meant Rutgers. The direct expenditures of Rutgers, I think you mean.

MR. WATSON: Yes, the direct expenditures of the State University, to create ratables, which are of a tremendous financial value to the city. The city would be worse off, both financially and culturally, if the University were not here, in my judgment. Now, when it gets to be 50 or 60 per cent, if it ever does, which it never will, it won't go beyond what it is, because—well, we won't go into that, but the Legislature, in its infinite wisdom, has constitutional and statutory power to attend to it.

MR. MILTON: Trusting the benefit of payroll and expenditure of money is one of those imponderables that none of us is able to analyze. Both of us have represented corporations that wanted to acquire sites and close streets and put railroad tracks across streets.

I won't charge you with it, but I have painted rather glowing pictures of the benefits of employment on a large scale.

MR. WATSON: I've done the same thing, but I'm sure not so eloquently as you did.

(Laughter)

MR. MILTON: Thank you, and we both stand guilty, maybe.

CHAIRMAN: Thank you very much, Mr. Watson. We will now hear Mr. John F. O'Brien, who appears on behalf of the New Jersey Committee for Constitutional Revision. Mr. O'Brien has previously addressed the Committee and I assume that what he now has to say is probably a recapitulation, so to speak, of what has been said before—perhaps something additional in a short way.

MR. JOHN F. O'BRIEN: In other words, that is an invitation to be brief.

(Laughter)

When I appeared before the Committee recently on June 24 and made the proposal that the tax clause be changed, I suggested that I would like permission to file a brief giving the reasons for it. However, all of the delegates to the Convention have in their possession the proceedings that were conducted, or the hearings that were conducted in 1942. The reasons that brought about the original proposal that the tax clause be changed are covered very thoroughly, I think, and rather lengthily in that brief. Inasmuch as they are available to the members of the Committee, I don't think that I should take the time. However, for the purpose of this record, I think it might be wise, and I offer it only in an effort to be helpful, to give a brief outline of the history of the proposal that the tax clause be changed. Then I would like to comment very briefly on two phases of the testimony that has been produced before the Committee.

The original proposal that the tax clause be changed was made on behalf of the New Jersey Association of Real Estate Boards at the hearing conducted in 1942, referred to above. The proposal was inspired by the fact that the revision then presented contained the same tax clause as was contained in the existing Constitution. The first revision of 1944 eliminated the "true value" provision and provided for assessment "at fixed standards of value." At a hearing conducted on that draft on February 3, 1944, we objected—by that I mean the real estate group objected—to this language as being too ambiguous, expressing the fear that it might be construed as freezing within the Constitution itself the standards of value which had been fixed up to that time, including true value. We were asked to reduce our suggestions to exact language form, and on February 7, 1944, we submitted a written memorandum reading as follows:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to classifications and standards of value to be established by the Legislature."

This is the same language used in the brief I presented to your Committee on behalf of the New Jersey Committee for Constitutional Revision at the hearing on June 24, 1947, the Real Estate Association having become an affiliate of the Committee.

Now, the above is presented, as I say, merely to be helpful, because at those hearing and at meetings of the Legislature when legislation was passed which would have affected the people who pay the bulk of the taxes, the real estate group, apparently, was their only representative. The main reason for suggesting a change in the clause was because of our intimate knowledge of the burden being borne by the people of this State who own property.

It must be recognized that the bulk of the taxes, in my judgment, in the State is tremendous. Three hundred million dollars that are being exacted this year will come from home or residential property in the average community. We did not wish to see frozen into the Constitution forever a capital tax on home ownership, for instance, or on general property ownership, for instance. It was all right when property represented the only form of wealth. Today I think it can safely be said that real property represents not more than 25 per cent of the total property wealth in this State. Our main reason was that we did not wish to prevent, in the future, new techniques of assessment which might leave the *ad valorem* system entirely out of consideration. After all, it must be remembered that of all the countries in the world, America and Canada are the only countries which base their main tax revenue on the *ad valorem* system of taxation.

I submit that the property tax imposes upon the homes of New Jersey a heavier proportion of all taxes than is done in any other state in the Union. It contains none of the elements which should be present in a good tax, if there is any such thing as a good tax, because it compels a man to pay a tax not only on his property wealth, which is the fundamental theory of taxes, but it compels him to pay a tax not only on what he owns, which is his equity, but on what he owes, which is his mortgage.

As I say, we realtors have lived with this for years in our business and we have brought its inequity before all of the hearings conducted two years ago. We are bringing it before this Convention today, also, as a member of this larger committee.

Now, in the testimony produced before your Committee fear has been expressed that to change the present tax clause would upset the interpretations of that clause produced through 50 years of litigation before the courts. I am no lawyer and possibly do not have the lawyer's concept of the importance of judicial decisions. But as a

layman I am persuaded that if the present clause has been the subject of 50 years of litigation, producing conflicting interpretations as to its meaning by our courts, there must be something wrong with it. Is it not fair to assume that the fault lies with the character of the tax base, that of property, and the requirement that it be assessed at true value? No such record of litigation has been built up by the other taxes levied in this State, such as gross receipts, franchise, gasoline, inheritance, bank stock, etc. The reason seems to be clear. These taxes are assessed by arithmetic; they bear some relationship to the ability of the taxpayer to pay the taxes assessed. They do not depend upon the judgment, opinion, or guess of the assessor as to the value of the base, and, so far as I know, they are assessed with a great degree of uniformity.

Contrasted with these taxes, the real estate tax, with its base the capital value of property as such, subject to change annually, requires 565 local assessing officers to determine the true value of each individual property in their respective districts on October 1 of each year; 21 county board of taxation to determine if the opinions of the assessors are correct; a State Board of Tax Appeals to determine if the decisions of the county boards are correct; and behind them all are the courts, and for 50 years they have been trying to correct the mistakes of all, with varying degrees of success, because the litigation still goes on, and will continue to go on, so long as judgment, opinion and guess dominate the local assessing process, and all appeals from that process. I think the very fact of this long history of litigation presents a strong argument for changing the present tax clause or eliminating it entirely from the Constitution.

The other testimony I would like to comment on is that contained in the brief presented by the League of Municipalities, which stands on somewhat firmer ground than merely the case record of court decisions on the existing clause. The whole objective of the League proposal is to prevent the Legislature from giving preferential treatment to large corporate owners of real estate, such as the limited rate accorded to the railroads. Speaking for myself personally, I am in entire sympathy with that objective. Whether the clause suggested by the League would achieve the objective is doubtful, unless it is contemplated that all real property throughout the State be assessed at a uniform rate in order to assure that, quote:

“The burden of direct taxation upon all real property not exempted shall be equal.”

This might achieve equality of rate, but would it achieve equality of burden? I think not, so long as the necessity of determining true value remains. The railroads, for instance, would continue to be assessed as at present, at high assessments in high assessment districts, at low assessments in low assessment districts. That is the evil of the

existing assessing process—the utter lack of equalization, not only between taxing districts and counties, but between individual properties in the same taxing district.

In considering the objective sought by the League of Municipalities, that of preventing preferential treatment, this fact must be borne in mind: Again using the railroads for illustration, it has been testified to here that the railroads should pay about \$25,000,000 in taxes; that is, if the preferential treatment had not been accorded. The amount we're concerned with is not \$25,000,000, therefore; it is the \$11,000,000 loss because of this preferential treatment. This is but a fraction of the close to \$300,000,000 being paid by other real estate owners for the year 1947. I think it is safe to say that the great portion of these taxes come from homes and other types of residential property. It is admitted that these taxes are exacted with no great degree of uniformity or equalization, and without regard at all to the owner's equity in the property assessed.

The question raised by the League recommendation, therefore, is this: Shall the Legislature be foreclosed forever, or for another hundred years, from attempting to solve the problem of the ordinary real estate owner, including home owners, who produce the bulk of the taxes, in order to make it more difficult for some Legislature sometime to give preferential treatment to some large corporate owner of real estate? That objective is, of course, desirable. But it would seem to me that it should be accomplished in some other way.

I submit that the League proposal is one of legislation, and if we are going to place a rigid tax program in the Constitution as to the assessment of real property, then we should also give some thought to the question of personal property wealth, the preferential treatment of which is one of the main causes for the high real estate taxes imposed by this State, and which, from a value standpoint, represents possibly three times the total value of all real property in New Jersey.

In making the proposal for the assessment of property according to classifications and standards of value, our committee has no thought that the Legislature will immediately dislocate our present tax structure with wholesale changes overnight. Our thought is rather that the Legislature be not prevented from making gradual improvements in our assessment process because of a tax provision designed for another day and age. The two reports of the State Tax Policy Commission, dealing with certain types of personal property, point the way to such improvement, and we do not wish real estate to be excluded from the studies of this valuable and competent state agency.

In these observations I have not discussed the gross inequity im-

posed by New Jersey on its home owners and other owners of real estate under the present property tax system, which exacts 80 per cent or more of the total tax burden from this type of property. Suffice it to quote this from the first, and repeated in the second, report of the State Tax Policy Commission (*reading*):

"New Jersey is a great industrial state but its densely populated areas are still attempting to finance their municipal services as if they were agrarian communities. Their real wealth lies in business activity, not in real estate; and the Commission's proposal suggests the establishment of a modest activity base."

And this from the late Dr. E. R. A. Seligman, of Columbia University, one of the country's greatest economists and tax experts (*reading*):

"The general property tax, as actually administered, is one of the worst taxes known to the civilized world. It is so flagrantly inequitable that its retention can be explained only through ignorance or inertia."

That is the tax and its administration that we wish to see improved in New Jersey. It is our hope that this new Constitution will not prevent it in an attempt to cure but one of its evils.

CHAIRMAN: Are there any questions for Mr. O'Brien?

(*Silence*)

CHAIRMAN: Thank you very much. . . . We will now hear Mr. A. R. Everson, Executive Vice-President of the New Jersey Taxpayers' Association.

MR. A. R. EVERSON: Mr. Chairman and members of the Committee:

Following your urging that there be as little repetition as possible, I would like to say first that we endorse the statement made by Commissioner Zink, without qualification, and that will save, of course, the discussion of the reasons, and so forth, as we agree with his statement in full.

MR. EMERSON: May I ask a question please? I think Mr. Wolkstein appeared before this Committee some time ago, representing your group?

MR. EVERSON: Yes, that's right.

MR. EMERSON: His recommendation was not the recommendation that was submitted by Commissioner Zink.

MR. EVERSON: I don't think that Mr. Wolkstein intended that that be a definite recommendation.

MR. EMERSON: Well, he made it definite.

MR. EVERSON: If he did, he misrepresented the thinking of the organization because, I might explain to you, in an effort to be helpful—strictly in an effort to be helpful—he suggested that property shall be valued for taxes under general laws and by uniform rules, according to its equitable relation to other properties of like

kind. The reason for making that suggestions, members of the Committee, was that we were attempting to find, if possible, other language by which this controversy over the tax clause might be settled without involving us in endless litigation. But we are in agreement with the comments made by members of the Committee at that time, and by others since, that it would probably lead us into more litigation than could possibly have otherwise occurred. So in order that we might clarify our position, we make the bland statement now that we agree with the statement made by Commissioner Zink.

MR. EMERSON: We have two suggestions coming from your same organization.

MR. EVERSON: That suggestion is entirely withdrawn, sir—the original.

MR. EMERSON: Are all statements made by Mr. Wolkstein withdrawn?

MR. EVERSON: Not necessarily. That probably is the only one.

I don't think it's necessary to read that clause again. I think it has been fully covered. Now we have an entirely new thought. We think it is one of the matters that should be under consideration by this Committee, and it is this: We believe that the taxpayers—this has nothing to do with the tax clause—should be protected against the imposition of new forms of taxation, through constitutional provision. Therefore, we make this proposal:

“That a two-thirds vote of the Assembly and Senate be required before any new forms of taxation could be legalized by the State Legislature.”

Without expanding too much on that, that is intended to protect the people against the imposition of any kind of a statewide tax—for instance, the sales tax in the '30s, which everyone knows was imposed upon the majority of the people by merely one vote. Largely because of that, I think, it was repealed within 4½ months. That is the purpose of that.

We spoke on dedicated funds before and asked the privilege of expanding somewhat on that. I am speaking again on that subject. It is the position of the New Jersey Taxpayers' Association that the Constitution now being framed should prohibit dedication of funds.

The funds with which the State of New Jersey supports and maintains itself are derived in the first instance from the people themselves. There is no reason for segregating these funds, derived from all the people, for the exclusive use of any state department or agency. The people's money contributions to State Government, represented by their taxes and license fees, is total, indivisible revenue that should be paid into the general state fund for such uses as the public interest may require. To dedicate funds to the use of individual departments and agencies is not only bad fiscal practice,

but it is against the best interest of the people of New Jersey. To write such an ironclad, permanent provision into the State Constitution is to straight-jacket and cripple the Legislature and the people.

One of the most powerful arguments against dedication of funds was provided during the depression when we were faced with the question of utilizing available highway funds to keep the people from starving, or retaining these funds to build roads. In those days it was a question of "Shall the jobless people have food or shall they eat concrete?" In the dreary year of 1932, for example, over \$8,000,000 was diverted from the State Highway Fund, the motor vehicle fuel tax and the motor vehicle license tax, to state unemployment funds to sustain human life.

From 1931 through 1939, an eight-year period, the State expended for emergency relief over \$143,000,000. Of this amount \$31,000,000 came from the State Highway Fund, which was 22 per cent of the entire state expenditure for emergency relief in that period. If we now dedicate highway and kindred funds by constitutional provision, we shall forever seal off this vital source of revenue and foreclose its use for human need should the chaos and disaster of a depression or any other catastrophe come upon us again in New Jersey.

I do not think that the framers of New Jersey's new Constitution want to shut the gates against relief from this source in any future economic emergency. You cannot be sure today, when you are writing a Constitution for years to come, that nothing like this will ever happen.

Regardless of any future economic stringency we feel, as a matter of sound public policy and good business administration, that the funds provided by the public for the support of State Government should go into a general state fund and thus become available for expenditure in accordance with the fiscal demands of the State Government and appropriated for such by action of the Legislature. This procedure will insure at all times a flexibility of legislative fiscal action that will meet changing conditions as they arise, without any possibility of the State Legislature being handicapped by dedicatory bans imposed by constitutional provision.

If there were no apparent evils in the dedication of funds, there would be no discussion of this subject. I have here some quotes from statements made by Governor Edge, by Commissioner Miller of the Highway Department, and others which I think you've already heard. I think they are a matter of record now, so I will not repeat them. But I would like to read this one. The Commission on County and Municipal Taxation and Expenditures, in its 1931 report, as far back as 1931, declared (*reading*):

"The State of New Jersey will never get its finances in order, and it will never be able to set up the kind of budgetary control of these finances which is so essential to wise and prudent management, until the unscientific practice of dedicating specific revenues for specific purposes is entirely abandoned."

We think the Constitution should prohibit the dedication of funds. It is the responsibility of the Legislature to appropriate and apportion state funds to meet the State's obligations. Such obligations should be paid by legislative direction out of the general state fund. The payment of these obligations is assured by the credit of the State, and there is no need to segregate and earmark obligatory expenditures of the State by constitutional enactment.

On the matter of the general state fund, we have long advocated a general state fund and a single fiscal year for all state divisions. While these objectives have been accomplished in great measure in the past several years, we feel that the Constitution should permanently establish such a policy for the State Government.

Now, on tax exemptions. Exemption of property from taxation, at the expense of all who pay taxes, has become one of the leading tax problems of New Jersey. A recent compilation made for this association shows there are almost 57 varieties of tax exemption provided under New Jersey law. A compilation of these excerpts of law is available to committee members. By reason of this liberal policy of tax exemption, which has been so costly to the taxpayers of New Jersey, the total value of property exempted from taxation has bounded from \$1,030,938,000 in 1937 to \$1,317,596,000 in 1946. This is 20.3 per cent, or more than one-fifth of the entire valuation of all New Jersey property. (A tabulation of property exemptions in each of New Jersey's counties is set forth on the last page of the association's publication *Latest Financial Statistics of New Jersey Municipalities*, copies of which are available to the Committee also.)

The Association has made several extensive studies of the problem of tax exemption. These are so voluminous as to make impossible their presentation here. We will, therefore, try merely to sum up the net result of our studies and thinking in this presentation.

We believe there should be a constitutional declaration which would sharply limit tax exemption of property, thereby providing a large measure of tax relief to local taxpayers. We propose the following (*reading*):

"Exemptions from taxation may be granted only under general laws and by uniform rules approved by a two-thirds vote of both houses of the Legislature."

CHAIRMAN: Mr. Everson will you make available to the Committee these various reports you spoke of?

MR. EVERSON: I have all of this gathered together in separate envelopes for each of the committee members.

CHAIRMAN: That's fine; then you will see that we have them. Thank you very much.

MR. EMERSON: Your association, I believe, represents the local property owner?

MR. EVERSON: To a large extent, yes.

MR. EMERSON: What objection is there, on the part of your association, to the creation of new taxes which might give some relief to the local taxpayer?

MR. EVERSON: That's a question, I believe, that requires a great deal of detailed explanation. In the first place, we have searched the records of every state in the Union where new taxes have been imposed on the theory, or on the promise, that they would be replacement taxes and would relieve the property owner, and in no single instance have we been able to find that any of these replacement taxes have relieved the property owner for longer than a three-year period. They have become additional taxes. Now, until some method can be provided, some scheme devised, by which the local taxpayer is protected against the new taxes becoming additional, we would like to see all the safeguards set up against the imposition of new taxes. Hence, this suggestion of ours on the method by which new taxes might be imposed by the Legislature. Those records, I think, are clear and are available, of course, to anyone who is interested in seeing them.

MR. EMERSON: This thought of accomplishing your objective—it will merely make it more difficult to pass tax legislation.

MR. EVERSON: That's right. It would stop the imposition of a sales tax, an income tax, and any other general tax, by a mere majority in both of the houses.

MR. EMERSON: Don't you think it is only a matter of a short time before we have an income tax in New Jersey?

MR. EVERSON: I'm not prepared to say what I think of that now. I think that is strictly a matter of individual opinion.

MR. DWYER: Mr. Everson, this Committee has heard lengthy testimony which has directed all our thinking to the burden imposed upon the home owner as the principal contributor of taxes for the maintenance of our services. I, myself, would be repetitious in so far as asking you what we are to do with an announced deficit in this year's state financing of the sum of approximately 50 millions of dollars unless we direct some thinking generally to broadening the tax base? The reality is that \$50,000,000 deficit. If we keep within the circumscribed area of imposing taxes on real property and the intangibles of industry, and they are not adequate to preserve us from state-wide insolvency, what is the substitute, in your opinion, if we agree generally that the tax burden upon the people of this State, in so far as realty is concerned, is at the very ultimate

limit and is something that has to be relieved by men who are concerned about maintaining a form of government in this country that we cherish? We will have to forego that form if we completely make chaotic our country and our State because of our inability, under our present taxing system, to produce proper revenue for the services demanded in this day and age.

MR. EVERSON: I have been under the impression that the Constitutional Convention was not to devise ways and means of accomplishing anything, but simply to write a Constitution that would make that possible, if and when the time comes that it's necessary to do it. Therefore, the desire for such ability, as has so often been said, the desire to make it possible for any changes which may come about.

I have not said in any of my testimony, or intimated, that I am opposed to new taxes. While I may be, therefore, I think there should be a considerable amount of thinking along those lines. I think there should be deep and careful thinking, so that if and when the time comes that it is necessary to change these things, the Constitution will make it possible to do so. And I believe that under the clause that has been suggested, that would be entirely possible. Does that answer your question, Mr. Dwyer?

MR. DWYER: Yes, except that you emphasize with such particularly the inhibition that the State Taxpayers' Association has against engaging in any other type of tax except those already existing.

MR. EVERSON: On the other hand, it might be that we might have to accept some such thing as that some time. I only pointed out to you what the experience has been in the other states, just for the benefit of your thinking.

MR. DWYER: That is all I am looking for, guidance and information.

MR. LIGHTNER: Mr. Everson, at the conclusion of your remarks you proposed a change in the Constitution with respect to tax exemption. In making that proposal, is it contemplated that all existing tax exemptions would be eliminated and that the continuance of any existing exemptions would have to be by new legislation, enacted under this proposed new clause?

MR. EVERSON: I don't think that that would necessarily involve all provisions for exemption, because it is by general laws and uniform rules, many of which might apply conceivably to the present situation. I couldn't say that that would wipe out all the laws. I don't think it would, and still it might. I think you have to have a study made on tax exemption with reference to the laws and the applications that I have referred to, to reach your own conclusions as to how much might be involved if this clause is adopted. But if any other clause has been suggested, it might very definitely, I think, re-

quire the writing of new laws on everything, where in this case it might not.

MR. LIGHTNER: Didn't that proposal include that any such exemption be provided by legislation adopted by a two-thirds vote?

MR. EVERSON: Any law would be adopted by a two-thirds vote. Any law setting up the rules and regulations for exemption—not each separate, individual exemption. It doesn't say that. Let me read it again to you (*reading*):

“Exemptions from taxation may be granted only under general laws and by uniform rules approved by a two-thirds vote of both houses of the Legislature.”

MR. LIGHTNER: It's the two-thirds vote of both houses of the Legislature that I'm referring to. As a practical matter, would not that mean that all tax exemptions after the adoption of this Constitution would have to be the subject of new legislation?

MR. EVERSON: No, I definitely do not think so. I think if the Legislature sets up general laws having to do with exemption, and provides the regulations—any exemptions made by any local community, by any subdivision of government—

MR. LIGHTNER: Those general laws would have to be adopted following the adoption of the new Constitution.

MR. EVERSON: That's right.

MR. LIGHTNER: Then the practical effect would be that all tax exemption would be eliminated except as it was given by new legislation adopted pursuant to this provision.

MR. EVERSON: Which wouldn't mean, as I understood your question, that all exemptions would necessarily be like that, because many of them might come within the scope of the new law.

MR. LIGHTNER: My point is, I want to know whether I correctly understand your proposal. And as I understand it, it would mean the elimination of all tax exemptions and then the creation, or re-creation, of tax exemptions by general laws enacted pursuant to this new provision.

MR. EVERSON: I think that is a practical acceptance of my view. I think that is what would occur.

MR. LIGHTNER: So that the Legislature would have to start all over again on the question as to what exemption should be granted?

MR. EVERSON: I think so, and I think that would be a good thing. Anything else, Mr. Chairman?

CHAIRMAN: I would like to say that those who are operating the public address system have asked to be relieved at 12:55 because of their luncheon commitments. I think we have one more speaker, or witness, to be heard between now and 12:55.

I will call on Mrs. Irene Baldwin who will speak for the New Jer-

sey League of Women Voters on several matters before the Committee. Mrs. Baldwin.

MRS. IRENE BALDWIN: Mr. Chairman and members of the Committee:

May I say, Mr. Chairman, first, that the New Jersey League of Women Voters is an organization composed of 44 local units in this State, and we are devoted to the study and action of government exclusively, and approach governmental problems from the point of view of the citizen in a democracy.

The opinions which I express this morning were voted upon by the State Council of the New Jersey League, which includes representation from each local unit in the State. Our complete recommendations are in this booklet, a copy of which each one of you have.¹

The first point I would like to call your attention to is that we are in favor of all state monies in a single treasury. We are opposed to all dedicated funds except when absolutely necessary in the case of matching federal funds, etc. The second point is that the fiscal year be the same for all departments of State Government. These two features which are now taken care of by statute, are not in the Constitution, and we believe they should be in the Constitution.

The next point is, we are in favor of the Constitution mentioning an Auditor who is to be elected by the Legislature, to act as its agent. On the other hand, we believe that mention of the offices of Comptroller and Treasurer do not belong in the Constitution, but should be a part of the State Department of Finance and provided for by law.

The fourth point is that the budget be submitted annually by the Governor, accompanied by an appropriation bill which must be acted upon before any other appropriation bill is passed. Provision can be made for an emergency appropriation, upon recommendation of the Governor.

When it comes to the question of the tax clause, I hesitate to endorse any statement already made since the League of Women Voters speaks only for itself. However, I will say that we are a member of the Committee for Constitutional Revision and as such Mr. O'Brien speaks for us. I would like to call your attention to the fact that we are in favor of a change in the tax clause since there is doubt in the minds of a great many authorities. We believe that now is the time to leave no doubt that the Legislature can provide for a modern tax system and adequate and equitable taxation.

Those are our points, Mr. Chairman, and I would just like to call your attention to the fact that our recommended changes do have a

¹ The proposals of the League appear in the Appendix to these Committee Proceedings.

paragraph on public education. I'm not sure whether that is under your Committee or not.

CHAIRMAN: We have the public education paragraph.

MRS. BALDWIN: May I just call your attention to that paragraph which simply states—

CHAIRMAN: Was your suggestion the one that we divide it into two paragraphs and put the last sentence in the present Constitution as the first paragraph?

MRS. BALDWIN: Our suggestion says (*reading*):

"The Legislature shall provide for the maintenance and support of a system of free common school 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."

It's simply a general statement.

CHAIRMAN: Any questions for Mrs. Baldwin?

(*Silence*)

CHAIRMAN: Thank you very much Mrs. Baldwin. The Committee will stand adjourned until 2:00 P. M., when we hope we may finish our hearings so that we can deliberate and get to the Convention some report on a proposed Taxation Article.

(*The session adjourned for luncheon at 12:55 P. M.*)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 15, 1947

(Afternoon session)

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

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The Committee on Taxation and Finance will kindly come to order. The Secretary will announce the witnesses to appear at the hearing.

MR. JOHN J. RAFFERTY: The first witness this afternoon is Thomas E. Hunt, Secretary of the Board of Assessment and Revision of Taxes of the City of Newark, who is representing the Mayor of the City of Newark, the Honorable Vincent J. Murphy.

MR. THOMAS E. HUNT: Honorable Chairman and members of the Committee on Taxation and Finance of the Constitutional Convention, ladies and gentlemen *(reading)*:

"The City of Newark is a member of the State League of Municipalities and is vitally interested in the proposal which has been advanced before your Committee by the League with respect to taxation. The executive committee of the League which recommended the proposal of the League included Mr. Thomas Kane, a member of the Law Department of the City of Newark.

The proposal of the State League of Municipalities with which I, as the mayor of the City of Newark, am heartily in accord is that 'the burden of direct taxation on all real property not exempted shall be equal.'

The addition of this clause to the taxation proposals of the Constitution is made necessary by the fact that hundreds of millions of dollars worth of real estate in New Jersey is being accorded the preferentially low tax rate of \$3 per \$100 at a time when the average rate of taxation throughout the State, as well as the rate in the City of Newark, is approximately \$5.50 per \$100. I am referring, of course, to property used for railroad purposes which since 1941 has been made an object of subsidy by the Legislature at the expense of the municipalities of the State wherein second-class railroad property is supported by the state educational agencies and the local school districts which are supposed to be supported by the proceeds of taxation of main stem railroad property.

During the year 1947 this tax subsidy to the railroads cost the State and its municipalities \$11,000,000 in lost railroad taxes which would have been realized if second-class railroad property had been taxed at local rates and if main stem railroad properties were taxed at the average state tax rate. The municipalities of New Jersey cannot afford the five and one-half million dollar subsidy which is imposed upon their general real estate taxpayers for the benefit of the railroads, and the State and local educational funds cannot afford the additional five and one-half million

dollars which the railroad \$3 tax rate compels them to extend to main stem railroad property by way of an additional subsidy. The municipalities and school districts of the State are being slowly choked to death for lack of funds to provide for the support of municipal government and adequate maintenance of schools, the costs of which have risen so sharply since 1941. It is nothing less than shocking that under such circumstances property used for railroad purposes should continue to enjoy a fixed \$3 per \$100 rate without any responsibilities for or share in meeting the constantly increasing cost of local government and school administration.

As I understand it, the Constitutional Convention is not concerned with the general problem of finding tax money for the support of government. That is a legislative problem, but the Constitutional Convention is, or should be, concerned with basic and fundamental principles in the levying of the tax burden. I can think of no principle more basic or fundamental than that of equality. The application of the principle of equality is urgently demanded in the tax treatment of real estate which is compelled to bear from 90 per cent to 95 per cent of the cost of local government in this State. It has been regarded in this State since 1875 as basic that all forms of real property, especially that used for railroad purposes, should bear the burden of property taxation equally. It was inequality in the tax treatment of railroad property prior to 1875 which led to the adoption of the present clause of the Constitution calling for uniformity of taxation.

The people of Newark join with the people of the rest of the State at large in demanding that this Convention restore that principle to full effectiveness by specifically reciting in the tax clause of the new Constitution that the burden of taxation on all real estate shall be equal, as has been proposed by the State League of Municipalities and the State Federation of District Boards of Education of New Jersey.

Respectfully submitted,

VINCENT J. MURPHY,
Mayor.

CHAIRMAN: Any questions to ask Mr. Hunt? . . . The subject you are covering has been pretty well covered by the people appearing before us. Thank you very much.

MR. RAFFERTY: We will now hear Mr. Jacob Fox, counsellor-at-law of the City of Newark, counsel for the Board of Education of the City of Newark.

MR. JACOB FOX: I am here, members of the Committee, in connection with two provisions of the Constitution: the one dealing with what is commonly known as the education clause, and second, the tax clause. We have prepared and submitted a memorandum which is too long to read, and I think I can say in less words orally what you have in the document.

The present Constitution contains provision that the Legislature shall provide for the maintenance and support of free public schools. In practice that has meant this, that the Legislature has interpreted, and legalistically and perhaps correctly so, the word "provide" to mean to see that you have it; not necessarily to provide the where-with-all to support them with out-of-state revenues. And, as we all know, the result has been that the Legislature has discharged its constitutional function under that clause by saying to the school districts and to the municipalities that support them, "You do it."

And we have. We don't accept what I believe has been said here on another occasion, that we haven't been provided with schools, good schools. We have. Not as good as we could have had if we had more money, and not as good as we will have to have them if trends continue as they are with the money that we have.

Now, you have heard a lot about the tax rates. Newark's is \$5.98, and it is going to be more. We cannot continue to support education in our city on the present level with the resources we now have. The Legislature has done practically nothing. There is a constitutionally dedicated school fund, the income of which goes to the schools, but that's a mere pittance. It yields about \$500,000 a year to a total state cost in education of about \$150,000,000 a year, after you add up the recent salary increases and adjustments. No other funds have come to us worth mentioning. There was an annual deficiency appropriation made by the Legislature of about \$2,500,000 to be added to the late but not lamented state school tax, to make sure that every district got at least out of its own school tax levy plus the supplemented funds three cents a day for each pupil in attendance.

Last year we had an important revision and, in principle, it was a significant step forward to pass that bill, which provides a \$13,000,000 fund, \$10,000,000 more than had been provided before. The former fund was about a half-million dollars out of the State School Fund and the \$2,500,000 annual deficiency appropriation bill, a measure which became permanent in law in 1933. \$13,000,000 meant adding \$10,000,000, and to provide that \$10,000,000, \$4,000,000 was taken away from municipalities that they used to levy on intangible corporate property. The business tax, of course, took that over; that meant that the municipalities lost \$4,000,000. \$10,000,000 was added to schools for the benefit of municipalities, and the net gain out of general state resources was \$6,000,000, still a pittance.

We can't hope to go very much further at the hands of the Legislature. You can't go further without additional money. You can't get additional money, sufficient additional money, from any state resources now available to finance the kind of program we ought to have, and it will probably mean some kind of new taxes. Both parties every year put in their platform a plank against new taxes, so we are stuck. Neither party will yield, for fear of the advantage it might give the other party. "No new taxes" is in your party policy for both parties, and unless the Legislature and the political parties of the State are taken off the spot by some kind of legislative mandate dealing with schools, we won't have the revenues that we need to support the schools.

What we are proposing is an implementation of the present provision of the Constitution, prescribing some kind of minimum amount of practical state aid direct from Trenton out of state re-

sources other than direct taxes on property. That is not a radically original idea or proposal. Similar provisions already appear in many constitutions. I stopped up at your very excellent library here just before I came down and checked the recent amendment to the California constitution. (The trouble with talking into this "mike" is that you can't look at anybody.) The California constitution now provides that the legislature shall add to the state school fund such other means from the revenues of the schools of the state as shall provide in said fund for apportionment in each fiscal year an amount not less than \$120 per pupil in average daily attendance in the public school system during the next preceding fiscal year. It will require some kind of revolution in New Jersey before we would ever attain anything like \$120 a pupil in practical, actual state aid for our schools, but at least some kind of minimum ought to be specified.

I want to point out the plight of our city. Under the new Pascoe Bill, while \$13,000,000 has been made available for public schools, the bulk of it, and perhaps properly so, would be in the first important measure in the direction of state aid for schools, and goes for what they call equalization of educational opportunity. In other words, the bulk of it goes to the so-called poorer districts, the theoretically poorer districts, which are not rich enough in ratables to support themselves or to provide a minimum standard of education without more state aid than would normally be given with the present limited resources to other districts. The formula is this: To measure how rich you are locally, we are required—each municipality—to figure out what the yield of a ten-mill tax upon our locally assessed ratables is. If that figure is less than \$94 per pupil in average daily attendance in the district, the State will give you the difference; and if that difference is less than \$3, they will give you \$3 per pupil. The purpose of that, of course, is to test the local wealth by this more or less artificial standard—and we know how artificial it must be since local assessments are the base, but it is the best that could be thought of—and to give more on that basis to those districts which seem to need more, and to indicate by a sort of token gesture that if you don't qualify on that basis for special state aid, you ought to get at least something, and here's \$3.

Now, \$3 in Newark, with an average daily attendance of 55,000 pupils currently, means about \$165,000. There are additional funds in the program—special aid for crippled children, dependent children, and for transportation, but they are negligible. It brings the total, plus another adjustment that crept into the law, so that we shall in no event get less than we used to get—and under the new statute it happens to figure out that we would have gotten less than we used to get, so the difference was added to it. The total amount

is \$302,000 for the current school year. That is compared to a \$15,000,000 budget. The percentage is so small, I have not bothered to figure it out. It is just no state aid at all. It costs us about \$300 per pupil under present costs; we get \$3.

Now, why here and why before this Convention? Only because nothing will happen unless it is mandated that a reasonable minimum be supplied. We are suggesting the addition of a clause similar to the one I just read—it comes from the California constitution—to what we now have in Article IV, Section VII, paragraph 6, I think: that the Legislature shall appropriate annually out of general resources and other state revenues, revenues of the State other than the direct property tax, a sum sufficient to equal \$60 per pupil in average daily attendance, and that that sum be the minimum to be distributed by the Legislature. The Legislature will then not be able to temporize at all with the \$60 figure. We know we will have it; budgets can be computed, at least, on that minimum basis.

The question may arise, too: Well, why \$60 to everybody, since the equalization question is in the picture? Some may need more than \$60. If they do, in that area the Legislature should have a free hand to provide such additional sums as may be necessary to equalize. But I want to point out that under the present program, even with liberal equalization, reasonably liberal equalization, only a half-dozen districts are now getting more than \$60, even in the so-called poorer districts. So that with a \$60 minimum it is not likely that any huge amount would have to be added for equalization in special areas. \$60 a pupil would require an appropriation of about \$36,000,000 a year compared to the \$13,000,000 now pending.

Senator Pascoe sponsored a bill in this year's Legislature calling for another \$13,000,000 to bring the minimum to \$30 a pupil and to bring the equalization formula figure from \$94 to \$110 per pupil. That would assess \$13,000,000 more; there was considerable support for it, and I believe it would have passed if the fiscal conditions of the State had not gotten so complicated outside of its obligation to education. So that the \$36,000,000 we are proposing would be only about \$10,000,000 more than what would have been produced by the new Pascoe Bill that was proposed and the one that is now law.

On the tax clause, we favor the idea behind the addition that has been recommended by the League of Municipalities calling for equal distribution of the tax burden on property. Now, why are we concerned with that? Newark does not get much out the second-class railroad tax as a city, but it does get some six or seven hundred thousand dollars, or has been getting. The shrinkage in the revenues from the second-class railroad tax as a result of the 1941 tax act by which the railroads are taxed at less than the average tax rate and at less than, I think, the lowest tax rate of any municipality, means

that we are going to lose some money. With the plight we are in, with no state aid for schools, with our tax rate as it is, a loss of \$300,000 in railroad revenue is important.

After the second-class rate there is also the main stem tax, and that is an interesting one. The legislation dealing with that tax, adopted about 35 years ago, is the only statute on the books dealing with school funds and school finance that uses the identical language that appears in the constitutional clause for education. It says that the revenue from main stem taxes shall be devoted to the "maintenance and support, etc," in the same language as the Constitution. So, it is significant that it has been the legislative policy, at least for the last 30 to 35 years, that that money belongs to the schools. The law provides that one-half of one per cent of the valuation of the railroads' main stem property shall be deducted from the fund—I suppose to cover the cost of collection by the State—and such other deductions as may be provided by law, and then the Legislature proceeded to divide it. We used to get about \$328,000—I should not say about \$328,000; we got \$328,000 one year. We got about \$300,000 on the average over a period of years out of the main stem taxes, which went direct to our schools. That is as much as we are now getting in the total state aid program, and this is what has happened to the money.

The various statutes have provided for various deductions that have been added from year to year. The fund is subject to deductions for certain state educational costs, education on the state level, before anything is to be distributed to the school districts. In 1940 those deductions were in an amount sufficient to leave about \$2,500,000 for distribution to the school districts, so we got about \$300,000. But the State's deductions have risen, and now they have completely consumed the revenue from the main stem taxes at whatever rate, so we get no more.

Nevertheless, it is important that whatever revenue that should be derived from the railroad taxes and from taxpayers in similar classifications is not whittled down. We are looking for money; the State is looking for money. There is a legislative committee out now to advise the Governor where funds can be found for the support of public schools, and here we are told that because of the revision in the tax laws, we will be getting less from the railroads between the main stem and the second-class taxes. We will be getting about \$10,000,000 less under the 1941 uniform \$3 rate on railroad property plus the franchise excise tax, when imposed, than we would be getting today if the railroads were taxed as they were before, by the average tax rate on main stem property and local rates on second-class. \$10,000,000 would go a long way toward providing the money

that the Governor and the legislative committee are looking for for the support of schools.

In the abstract, the principle that has come out of the decision of the court in interpreting and passing on the constitutionality of the 1941 railroad tax laws is rather terrifying. The decision says that it is possible under the present provision of the Constitution for the Legislature to prescribe one kind of tax rate for one class of property and another rate for another. Well, you have heard this, perhaps, over and over again, so I won't go into it too much, but it is rather terrifying to us that if it can be done for railroads, it can be done for any other classification of property or property owner that any capricious Legislature may choose to prescribe. We believe that it is fundamentally important, in the fundamental law of the State, that that should no longer be possible; that if property is to be taxed it should be taxed at the same rate, no matter in what classification it falls or irrespective of the classification of the owner. There is much more to be said, but I think I will have to leave the rest to the memorandum.

CHAIRMAN: Thank you very much. Any questions by the Committee?

MR. MILTON C. LIGHTNER: You referred to the amount of state aid given in California.

MR. FOX: Yes.

MR. LIGHTNER: California has both an income tax and a sales tax, does it not?

MR. FOX: That is right.

MR. LIGHTNER: Which provide state revenue?

MR. FOX: That is right.

CHAIRMAN: Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. Fox, you stated that the aid per pupil is \$3 in the lower grades and \$3.75 in the upper grades?

MR. FOX: Yes.

MR. EMERSON: That is on the basis of \$13,000,000 being available for school purposes?

MR. FOX: Yes.

MR. EMERSON: If that is so, it will require a great deal more than \$36,000,000, wouldn't it, to make an appropriation of \$60 for each pupil?

MR. FOX: Well, I have suggested the flat sum of \$60 without distinction between elementary and secondary school pupils. The professors figure that it costs one and a quarter times as much to educate a secondary school pupil as it does to educate an elementary school pupil. It complicates formulas, and if we get out of peanut money and into sizeable funds, I would be satisfied if we had a uni-

form sum. My \$36,000,000 figure is computed by multiplying the \$60 by about 600,000 pupils in average daily attendance.

MR. EMERSON: If \$13,000,000 only appropriates \$3 for each child, I should think, if you were going to allow \$60 per child, you would have to multiply the total appropriations by 20.

MR. FOX: Oh, yes. There is the other factor there, Mr. Emerson. There is the equalization factor. Of the \$13,000,000 distributed under the present law, the following sums are distributed in various classifications: to distribute \$3 to every district which is not entitled to more because it isn't poor enough, you require \$826,000—that is about 240,000 pupils—which, curiously enough, is almost half the number of pupils in the State. Now, to provide the additional equalization aid above \$3 for the other half living in the so-called blighted areas, \$8,500,000 is required, and the balance up to \$13,000,000 is consumed by special aid for transportation, crippled children and special classes.

The interesting thing is that it so happens that almost every large city in the State finds itself in the \$3 company. There is Newark, there are Paterson and Passaic, there's Elizabeth, Jersey City, most of the towns in the more populated counties, Essex and Hudson and Passaic. We are rich. I am not criticizing the formula; I don't know of any better way to measure wealth, but obviously, while it may be good for the benefit of those who qualify as poor under it, it is unsound as to us, because what our ratables are and what our ratables will yield does not necessarily determine how rich we are. We also have to consider what kind of problems densely populated cities have, as distinguished from the rural areas. The small towns and the more remote sections of the State don't have the kind of municipal headaches that we have. They don't have slums, they don't have housing clearance, they don't have the traffic problems and crime and hospitalization problems that the densely populated cities have; yet those things are not charged up against the revenue that ten mills on our assessed ratables would yield. Not only that—we all know that assessments are higher in the larger cities.

Mr. Zink had an interesting experience with something about a duck preserve recently, where the State was going to spend \$50,000,000, or something like that, for a preserve, and it was supposed to be worth a whole lot of money, something in that area, everybody agreed, running into many millions of dollars. I'm sorry, many *thousands* of dollars. The assessment on that property, I understand—I'm so used to talking in millions, in going to a school for finance—the assessment on that property, I believe, was about \$35,000. That town's wealth in terms of the amount of money it was entitled to get from the State was computed on the basis of that kind of an investment.

Now, we have people in Newark buying properties that are being assessed over 100 per cent—I know a lot of them are—in terms, not perhaps of today's values, because they are transiently high, but in terms of what values were two or three years ago. And it was impossible to get the true value in the city and still keep the city running—values were so low. But \$3 is what every large city in the State qualifies for; I think there are some 120 municipalities that get no more than \$3 per pupil, and they embrace half of the school population of the State.

Now, with the railroad's taxes being whittled away, what with the State diverting them to so-called state educational functions, and what with the shrinkage in the total amount that the railroads pay because they have been permitted to occupy a position of privilege under the \$3 rate, we are facing in the wrong direction so far as our schools are concerned. If education is important to this Convention, it seems to me that something should be done in the direction of this suggestion.

MR. WILLIAM J. DWYER: Are you considerate of education in the \$50,000 factor for the duck preserve? I was astounded when you said fifty million . . . Will you break down the \$60 equation that you talked about?

MR. FOX: The average daily enrollment in the State this year—daily attendance in the State this year—was about 585,000. Now, I figured 600,000. Sixty dollars times 600,000 equals 36 million—I can repeat large figures; I'm not so good in multiplying. But, it's \$36,000,000, I'm sure. Now, even if four or five or six or seven million dollars more were required to provide more than \$60 for those districts which would have to have it, that is no frightening sum when you consider that New Jersey is at the bottom of the list of almost all the states in the Union, even with the increased amount of state aid in the amount received out of general resources other than local property tax. It runs as high as 50 per cent more than that in some states, and it's time that we woke up.

As long as the Legislature can get by with passing it on to the local tax rate, the probability is that, not out of any maliciousness on the part of individual members of the Legislature, but out of the actual realities of the situation, nothing will happen. It cannot be said that the Constitution is not the place for that kind of provision; it's in it already. "Provide" should mean, I think, bringing the money in. If it doesn't mean that, it's in the Constitution anyhow, because a sum has been set up by the present provision, the income from which is dedicated constitutionally to schools.

MR. DWYER: Well, by implication, at least, you are suggesting the problem is the taxpayer's.

MR. FOX: Yes, I am.

CHAIRMAN: We will now hear from Mr. Milton R. Conford, counsellor-at-law, representing the State League of Municipalities.

MR. MILTON R. CONFORD: Mr. Chairman and members of this Committee:

I want first to express my thanks for the time and the patience which has been extended to me and to the State League of Municipalities and particularly for this opportunity to respond to the several points of opposition that have been expressed by certain witnesses to the specific clause that the State League has recommended for addition to the Constitution. When I get this off my chest you will have heard the last of me, I assure you.

Now, as I said, a number of appearances have been noted before the Committee. Some have been emphatically in support of the proposal of the State League for the addition to the existing tax clause of the Constitution of a provision for equality of tax burden on all real property not exempted, and other viewpoints have been expressed by way of opposition. But none of the witnesses for the opposition before this Committee has in so many words faced the issue as to the fundamental justice of spreading the tax burden allocated to real property equally among all classes of real property owners. Not one opposition witness has advanced the contention that real property used for railroad purposes should, as a matter of public policy, be deliberately afforded a preferential property tax rate.

As you know, the State League of Municipalities has proposed a clause which I won't bother repeating, but which in substance provides that the tax burden on all real property not exempted shall be equal. Dr. John F. Sly, chairman of the State Tax Policy Commission, has appeared before this Committee and supported a revision of the existing tax clause which would provide in substance—I may not quote it exactly because I don't have the language before me—but substantially he recommends that property shall be assessed for taxes according to classifications of property and standards of value prescribed by law. An anonymous spokesman for Governor Driscoll has told the press that the Governor favors this revision, and miscellaneous reasons have been advanced in support of this revision, varying from attacks upon true value as a standard assessment, to assertions that the existing tax clause does not give the Legislature broad enough powers of classification of personal property for tax purposes.

But the amazing thing is that in all such theoretical discussions by state administration spokesmen, no attention whatsoever has been given by anyone to the actually existing and not theoretical grievance of the municipalities and the school districts of this State, as well as of the great mass of general real estate taxpayers, concern-

ing the preferential taxation of property used for railroad purposes at \$3 per hundred at a time when real property throughout the State is paying an average tax rate of \$5.50. Despite the fact that not a single court decision in New Jersey can be cited questioning the right of the Legislature to classify every type of property, personal as well as real, for tax purposes, and in the face of existing tax classifications of property of the widest variety, such as complete exemption from taxation of all intangible personal property, exemption of all tangible property situated in public warehouses, the constitutionality of which has been recently sustained by our courts.

The spokesman for the Sly proposal continue what I sincerely believe is a refined and purely theoretical discussion as to whether that proposal would not give the Legislature broader classification powers than the existing Constitution. But while engaging in these discussions they totally ignore the outright violation of the most fundamental American doctrine, the equality of tax treatment, constituted by the present legislative subsidization of property used for railroad purposes, at the expense of home owners and other real estate taxpayers generally. They offer not a single word of explanation or statement of their position as to the request of the State League that whatever be the language finally adopted covering the tax powers of the Legislature generally, the Constitution should contain a provision redressing the actually existing grievance of our real estate taxpayers, upon whom is thrust 95 per cent of the cost of local government, by providing that the burden of real estate taxation on all real property shall be equal.

While the Governor himself in his inaugural address pressed for "equality of treatment" as a necessary basis for tax readjustment, and administration spokesmen have discussed with the press and with this Committee the need for uniformity and avoidance of confiscation by taxation, the only actual existing instance of inequality, and of a threat of confiscation, is in respect of real property which, despite the fact that it is being taxed almost to death in this State, is nevertheless subjected to the most unfair type of inequality conceivable—that of requiring it to pay local taxes at rates swollen by the fact that hundreds of millions of dollars of property used for railroad purposes is favored at the preferential low tax rate of \$3 per hundred.

Without expressly making such a statement, the silence of the oppositionists amounts to taking the position that such change as it may be desirable to make from time to time in the taxation of particular categories of real property, such as that used for railroad purposes, should be left to the Legislature rather than fixed in the Constitution. Yet none of these witnesses has offered anything by way of response to the showing which we have made, that it has been re-

garded as basic by our people since the adoption of the present tax clause in 1875 that all classes of real property owners should share the burden allocated for support to real property, equally. There has been a complete failure to take any position in respect to this subject, and accordingly it cannot but be regarded as tacitly admitted by all who have appeared before the Committee that, in principle, all real property should equally bear the public tax burden.

Now, I proceed at this point to answer the specific points which have been made by those who have appeared in opposition to the proposal of the State League.

First, the position which was taken by Dr. Sly. Dr. Sly advocated a tax clause which has been supported by the Committee for Constitutional Revision and which I have quoted above. He took the position that such a tax clause would expand the flexibility of the legislative powers so as to cover powers of tax classification regarded by him as doubtful today, and also, to assure the constitutionality of an income tax. Dr. Sly testified before this Committee that he had some doubt as to whether an income tax was possible under the existing Constitution. Dr. Sly specifically opposed the proposal of the State League of Municipalities on the ground that it was "vague" and because it would prevent the Legislature from classifying real property for tax purposes. I should like to take and respond to each of Dr. Sly's points.

First, as to whether the State League's proposal would prevent classification of real estate for tax purposes. We concede that under our proposal real property could not be classified for purposes of assessing discriminatory or unequal shares of the tax burden. We vigorously dispute, however, any implication that our proposal would prevent classification of different types of real property for purposes of evaluating the same as a part of the assessment machinery, as has been done in this State since 1884. Railroad properties could, as now, continue to be classified separately for purposes of the technique and methodology of valuation for assessment, but, after its true value was determined and assessed, the rate applicable thereto would be required to be fixed with an eye toward equality with that borne by real estate of other taxpayers contributing toward the common governmental burden. If Dr. Sly means to take the position that the Legislature should be privileged to continue in its discretion to levy discriminatory or unequal shares of the public tax burden against different classes of real property, we are content to let this Committee decide the issue on the basis of the ready example furnished by the actual consequences since 1941 of the preferential \$3 rate on railroad real estate upon New Jersey municipalities and school districts. We entertain no doubt as to how

any realistic-minded and representative group of New Jersey citizens would regard the question as to whether there is not needed a constitutional provision for the purpose of absolutely barring an annual \$11,000,000 subsidy in favor of interstate railroad trunk lines with stock and bond capitalizations of hundreds of millions of dollars, if not billions of dollars, at the expense of New Jersey state school funds and general real estate taxpayers in the various municipalities.

In this connection it is appropriate that we should recall to Dr. Sly's attention the excerpt from the inaugural address of Governor Driscoll, which was quoted by Dr. Sly's Uniform Tax Policy Commission on the flyleaf of its recent report. They quoted Governor Driscoll as having said this (*reading*):

"I have heretofore made it plain to the voters of the State that I would support no proposal looking toward a state income tax, or a state consumers' sales tax. I also made it plain that such additional revenues as were needed to meet the pressing service needs of the State and its municipalities should come from intelligent and effective economies; tax adjustments that would assure full coverage and equality of treatment; and replacement revenues that would be substituted for outmoded tax bases that are no longer effective."

We submit that when Governor Driscoll spoke about "equality of treatment" as part of the tax readjustment to realize the funds that this State needs, without an income tax and without a sales tax, he was discussing the identical subject which has inspired the proposal of the State League. Will Professor Sly continue to press for such a degree of flexibility in the tax clause as would tolerate the present unequal treatment of different classes of real property owners?

Now, second, as to the contention that the language we have advanced is "vague." Dr. Sly gave no explanation for his characterization of the League proposal as "vague." He merely asserted it. We hold no particular pride of authorship in the language which we have submitted. If any authority, any authority at all, can frame a different statement which will assure that all classes of real property assessed shall bear substantially the same tax burden, that is, tax rate times assessed valuation, we shall be glad to accept the substitution thereof for the language we have advanced. The language we've used was inspired by that used by Chief Justice Gummere in the *Central Railroad case* reported in 75 *Law*, where he laid down the constitutional rule of equality of burden as between property used for railroad purposes and that of other taxpayers. We believe that the language we have proposed is not vague and that neither the Legislature nor the courts would have any difficulty in understanding, applying and enforcing it.

Now specifically, third, as to the alleged need which has been advanced by Dr. Sly and other spokesmen who have supported his proposal, that specific language must be incorporated in the Consti-

tution providing that property may be assessed according to classifications of property and standards of valuation to be established by the Legislature. Now, we don't agree that there is any basis at all in the existing judicial construction of the present tax clause to support the doubt that has been expressed as to the completeness of the power of the Legislature to classify various types of property for tax purposes. We believe the cases cited in our original brief completely dispel any such doubt. It seems to us that serious questions of judicial construction would arise and considerable confusion be engendered through any such revamping of the existing constitutional tax formula as has been suggested.

However, and on this I should like to lay all the emphasis at my command, we are not opposed to the objective of assuring the legislative power of classification for purposes of taxation, as an objective. We don't oppose the achieving of that objective by any device of constitutional language which is deemed advisable, or which this Committee in its wisdom may decide would better do the job than the existing tax clause. We ask only one proviso, and that is, that in classifying real property the Legislature not be permitted to discriminate in the tax-dollar burden levied against one or another class of real property owner, no matter who the particular property owner is—whether it is property used for railroad purposes, for purposes of public utilities generally, or electric companies, gas companies, water companies, apartment houses, home owners—we don't care who it is but, as long as real estate is called upon to pay 95 per cent of the cost of local government, we believe that all owners of such property should bear the tax burdens equally. We, therefore, would not seriously object to the substitution of the language advanced by Dr. Sly for that of the existing tax clause, provided only that there is added thereto the sentence which we have submitted for assuring the equality of tax burden on real estate, or its equivalent.

Now, former State Tax Commissioner J. H. Thayer Martin testified before this Committee, and his reaction to the proposal of the State League of Municipalities was what I would call equivocal. He did not state that he was opposed to the principle of equal burden of taxation on real property, but he stated that since the railroad companies are required to pay a franchise tax, which he called an income tax, equality as between railroad corporations and other taxpayers would not be accomplished by requiring the railroad taxpayer to pay the same property rate as other taxpayers unless other taxpayers are required to pay an income tax. This response patently evades the issue that we confront. As I have said before, and as I hope you will excuse me for repeating because of its importance, corporate franchise taxes and real estate property taxes are two en-

tirely separate and distinct things. Every corporate owner of real property in New Jersey pays, in addition to its real estate tax, a franchise tax to the State of New Jersey for the privilege of exercising its franchise to operate as a corporation. There is not the slightest reason why railroad corporations should not similarly pay a franchise tax to the State on any basis deemed reasonable by the State and uniformly applicable to all railroad corporations.

The incidence of a state franchise tax should not have the slightest relevancy to the principle of equality and uniformity in the payment of real estate taxes, whether owned by corporations or individuals. If, after the imposition of an equal real estate tax upon real property used for railroad purposes, the Legislature concludes that the railroad companies should pay a lighter or different franchise tax than at present, or even no franchise tax, we should regard that as exclusively a legislative problem and not to require constitutional attention. But, so far as real property taxation is concerned, the basic dependence thereon of our municipal governments and our school districts as the prime support of their operations makes it a matter of basic policy, attaining to constitutional stature, that the burden be assessed equally on all who must bear it.

The point has been made on behalf of the State Department of Taxation and Finance that the "effective" rate paid by railroad companies since 1941 should be estimated upon the basis of the gross yield from both property and franchise taxes under the 1941 law. What we have stated here above in response to the argument made by Mr. Martin is an adequate response. The municipalities would be quite content to have no share in the distribution of the franchise tax payable by railroads if their receipts from the railroad property tax were brought up to the level which would be realized from the assessment of such properties at the local rate, as before 1941. Franchise taxes on corporations are inherently and traditionally a state tax used for the support of State Government, in which municipalities have never made any claim. The one thing that is basic to the physical position of municipalities is that real property situated within their borders should, as it now has to do, bear the burden of municipal government on an equal basis.

Now, we don't apprehend that there is any proper basis for the plea that immunity from the basic principles of real property taxation should be accorded railroad companies on the theory of their being engaged in an activity affected with a public interest. Telephone, gas, electric, traction and water companies, food processors and manufacturers, milk, drug and medical supply manufacturers, and many other types of occupations and businesses are so much affected with a public interest that any discontinuance in their satisfactory operation would, as was threatened to occur during the war

period, seriously impede the public welfare. Under modern conditions of industrial consolidation and unification more and more of our national productive capacity is concentrated in the hands of fewer and larger corporate enterprises. The failure or crippling of any one of them would discommode the general public to an extent easily comparable with the situation the public would confront in the event of a railroad stoppage. Nevertheless, every one of the types of enterprise I have referred to, other than railroad companies, is required under our law to pay the full local rate on all real property which it may own and use. Out of all of the important and vital industrial and commercial activities in this State required to use real property, the railroads alone are favored with a preferential tax rate amounting, in effect, to a public subsidy, by the State of New Jersey, shared by no other state in the country, amounting to \$11,000,000 annually.

Railroad corporations operating through New Jersey are in most cases transcontinental, interstate trunk lines, New Jersey in many cases furnishing the chief terminal facilities therefor. We are aware of no state outside of New Jersey in which real property used for railroad purposes is exempted from payment of the local real property rate, plus, in many cases, franchise or excise taxes to the use of the state. Why, we ask, why should the State of New Jersey constitute itself the sole contributor to such corporations of a subsidy shared in by none of the many other states through which most of these systems run?

The railroads operating in New Jersey are, in as full a sense as any other commercial corporations, primarily organized and operated for the purpose of earning profits for private investors. This is, of course, as it should be. But the problems of competition faced by railroad companies should be regulated and disposed of as they now are, at the national level. It is not the business of the State of New Jersey to step forward with financial aid on behalf of any type of public utility to meet its problems of competition with other forms of transportation agencies—particularly at the expense of the great mass of other real property owners. Specifically, for example, it is not the proper function of the State of New Jersey to compel the non-railroad taxpayers of Weehawken, where 55 per cent of the assessed ratables consist of property used for railroad purposes, to subsidize the railroads owning 55 per cent of Weehawken's real estate by the assumption of a tax rate which necessarily absorbs the deficit produced by fixing the rate on railroad property at \$3 per hundred.

Similarly, in the case of each of the other 437 taxing districts in which second-class railroad property is situated. It should be constitutionally impossible for the Legislature to visit upon any of the non-

railroad taxpayers in such municipalities the enforced contribution of additional taxes upon their real property so as to make up for the deficiency arising from the assessment of railroad real estate at only one-half of the rate applicable to real property generally throughout the State.

I submit that there is only one real problem before this Committee so far as taxation is concerned—the tax clause—and that is the restoration of the rule of equality of tax burden on real estate which inspired the adoption of the existing tax clause as an amendment to the Constitution by our people in 1875, and which was recognized and enforced from that date down to 1945, when it was abandoned by our courts.

Other demands for revision of the tax clause which have been pressed upon this Committee, in my opinion, deal with purely theoretical deficiencies, or with problems of tax law administration which are purely legislative. This Committee should, under no circumstances, permit its attention to be diverted from the actually existing and festering violation of the fundamental principle of tax equality which we discussed, by the red herring of a contention that the existing tax clause is not sufficiently flexible to permit of personal property tax classifications and the imposition of income taxes. No matter what the Committee does in dealing with the second problem, if indeed it is a problem, it cannot in good conscience neglect the first, which is restoration of the constitutional rule of equality in real estate taxation.

MR. DWYER: May I inquire, for the benefit of the Committee—maybe the town of New Brunswick and the State generally—if, in making this levy of \$3 which you have dramatized, if that \$3 was directed solely at real estate owned by the railroads, or is it all-inclusive of their real estate and their equipment, their locomotives, their rolling stock, and their trackage and whatever property they may have?

MR. CONFORD: It is applicable to all of it.

MR. DWYER: That's what I want to bring out. I mean, I would get the impression, and I think many people would, that the \$3 levy was directed solely at the real estate.

MR. CONFORD: No.

MR. DWYER: And not at the equipment.

MR. CONFORD: No, the reason I emphasized that is because we do not have any objection to the classification by the Legislature of personal property of any description, no matter by whom owned, on any reasonable basis of classification that the Legislature sees fit. We would not regard it as a constitutional question, from the standpoint of what is basic, if the Legislature should say that all tangible personal property of the railroads or of any other special class

should be set aside and taxed at any rate that the Legislature saw fit, no matter how low.

MR. DWYER: Well, I'm going to school and you are the professor and you didn't complete the lesson for me. You didn't tell me about the levy having a comprehensive applicability to all properties of the railroad; you just—and I think you did it with a great deal of adroitness—conveyed the impression that the real estate was the sole property at which the tax was levied, the \$3 rate.

MR. CONFORD: I'm very sorry if I've conveyed that impression. I don't want any misapprehension as to that. Tangible personal property of railroad companies is taxed for \$3 a hundred for the use of the State.

Incidentally, the municipalities don't get any share in that at all, so that whatever the State does with that is a matter of the state levy. The municipalities share only in the proceeds of the \$3 rate on real property. No matter how much the State collects from the assessment of tangible personal property, it is a matter that the municipalities have no share in. And, therefore, what is done in that respect does not affect the grievance that they have.

MR. ALLAN R. CULLIMORE: I wonder if I might ask a question as another pupil of the professor? As I understand it—perhaps two questions—you would have no objection, then, on the basis of your reply to the question of Mr. Dwyer, if we should put in that the burden of direct taxation on real property, not exempted, shall be equal; but the burden of taxes on personal property may be unequal?

MR. CONFORD: I would say—I wouldn't put it that way; I would say that either under the existing tax clause, or under the proposal of Dr. Sly, either one of those would be acceptable and would accomplish that objective—that is, that different classes of personal property may be segregated by the Legislature for separate classification and also for purposes of putting whatever rate they may choose to put on them.

MR. CULLIMORE: That is, the burden of direct taxation on all real property not exempted shall be equal, but the burden of taxes on personal property may be unequal.

Now, there's just one other question I want to ask. What about the acceptability of this—

MR. CONFORD: May I just expand my answer to your question? I would not conceive that the Legislature might take a given class of personal property and provide for an unequal burden on the owners in that class, but I conceive that the Legislature properly should and might take intangible personal property, for example, as it has done, and provide that that shall be totally exempt. I would have no objection, constitutionally, to the Legislature taking all

tangible personal property as a class and provide for its assessment either locally or by the State, and the imposition thereon of any rate which would be economically advisable by the State.

MR. CULLIMORE: Now, the second question—for the sake of simplicity, might it not be possible to strike out the word “real”; to say “the burden of direct taxation on all property not exempted shall be equal.”

MR. CONFORD: No. That would do violence to the fact that traditionally and basically, no matter what the law has provided, personal property in this State has not been taxed actually at full local rates, and it would be economically unfeasible for that to be done. If, for example, tangible personal property were taxed at its true value and at full local rates, the result would be completely destructive of business. The same as to intangible personal property.

CHAIRMAN: Any further questions? . . . There seems to be none. Thank you very much Mr. Conford.

The Secretary informs me that that is the last speaker from whom we’ve had any request for hearing before the Committee. I think we have given very full hearings to those who have requested them. We’ve tried to give everybody who asked for a hearing the right to come before us and present his case.

MR. JOHN MILTON: I move the hearing close.

MR. EMERSON: Second the motion.

CHAIRMAN: It has been moved and seconded that the hearing now be closed. Those in favor will signify by saying “Aye.”

(Chorus of “Ayes”)

CHAIRMAN: Unanimously carried.

Does the Committee want to meet up in the room to discuss anything privately at all, or—we meet tomorrow morning at ten o’clock privately, and that will be a closed session. I understand from some of the other Committees that they have found it very workable to have just an executive session, at which they decide on the propositions they have. Some of them have kept them that way, some have opened them—not excluding any delegates, but excluding the press or some others. They just start off by getting their ideas exchanged there, and then go into what they please after that. It will speed the matter, I think, if we meet together for perhaps half an hour or so tomorrow morning to get our curriculum, so to speak, set forth. So we will meet at ten o’clock in Room 201 tomorrow morning, and decide on our curriculum.

I want to thank the public address system officials and the reporters and the various officials of the Convention who have very carefully and adroitly taken down things we have said, and perhaps what we have not said or meant to say, or they didn’t hear what we

said or thought we said. They've done a great work in overcoming the weaknesses, not of our Committees or of the witnesses, but of the modern machines, and once in awhile a member getting the microphone caught in his buttonhole and making the sound of an earthquake. Thank you very much.

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

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, July 29, 1947

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

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: Those of you who are here for the Executive Committee hearing may wait a few moments, or perhaps Mrs. Barus or someone will make a suggestion that you utilize our room, which is 201, in order to speed the work of the Convention.

Therefore, without more ado, I want to introduce to our Committee the Governor of the State of New Jersey, Honorable Alfred E. Driscoll, and ask him to present his views on taxation, a problem with which he has had a great deal to do during the last year. He knows the needs and the requirements of the State and what we haven't got to spend for what we would like to spend.

GOVERNOR ALFRED E. DRISCOLL:¹ Mr. Chairman and members of the Committee:

I should like at the outset to state that I would prefer to appear before you as a private citizen rather than as Governor of New Jersey. My responsibilities as Governor, however, require a brief explanation. I recognize that this distinguished Committee, as an instrument of the Convention as a whole, exercises a plenary power within the limits established by the citizens of the State. The Governor exercises a delegated power. I want you to understand, therefore, that I am not here to tell you what should or should not be done, but merely to advise with you as to my personal views as a citizen.

I have been deeply gratified by the accomplishments of the Convention to date. Whatever your discouragements may be, I can assure you that your accomplishments have been very real. Your willingness to meet difficult issues and to reconcile different points of view have been appreciated by the people of our State.

The purpose of government, in addition to the establishment of justice, the preservation of domestic tranquility and the defense of

¹The Governor spoke extemporaneously, as in the case of his appearances before other Committees.

the nation, is the promotion of the general welfare. Each of these objectives requires governmental services. Taxes are levied for the purpose of paying the necessary costs of these services. In my judgment, a proper tax system distributes the burden fairly and impartially, calling upon each taxpayer to pay his fair share of the cost of government.

I am confident that the members of this Committee recognize that they are confronted with a two-fold problem. One is the problem involved in the drafting of a constitutional provision; the other is the legislation required from year to year and from period to period to meet the changing requirements of government. In my opening address to the Convention I tried to emphasize the need to distinguish, on the one hand, between transitory legislation and, on the other, a brief, concise and enduring Constitution. In no instance is this distinction more important than in the field of taxation. I would, accordingly, strongly recommend that the constitutional language covering the subject of taxation be first, brief; secondly, concise; and third, flexible; and that we leave to citizens elected by our people from time to time the details of a tax program to carry out our public purposes.

If we are brief, if we are concise, if we are clear, and if the language that we use is readily understandable by laymen, I think that we will have gone far to clear up an uncertain situation that has existed in New Jersey for many years. You will remember that it was Woodrow Wilson who, in 1913, as Governor of the State of New Jersey, said, "Our whole system of taxation, which is no system at all, needs overhauling from top to bottom." This Convention is not expected to overhaul our whole system of taxation. I hope, however, that this Convention will, through a brief paragraph, give us the basis for a system of taxation that may in the future be adopted by the Legislature. As Governor of the State, I give you my assurance that, with the proper constitutional foundation, I will make it my business, as soon as economic conditions permit, to recommend to the Legislature that type of a tax system that will, generally speaking, insure equality of treatment for all the citizens and adequate support for the State and its political subdivisions.

Generally speaking, I am inclined to agree with the recommendations made by Mr. O'Brien when he appeared before this Committee some time ago. I am particularly concerned about the system that Woodrow Wilson called "no system" and which has forced this State to do by indirection and by subterfuge the things that it is prohibited from doing directly because of the present language in our Constitution.

I refer particularly to the words "true value" in our present Constitution. Those words I find objectionable. There are not, in my

judgment, many assessment areas in the State that are completely and fully complying with the constitutional requirement that property be assessed at its true value. You are aware of the situation. Assessors are instructed and required by law to assess real property, improvements and tangible personal property at true value. They file their assessments, they take an oath required by R. S. 54:4-36 "that I have valued it," referring to property, "without favor or partiality, at its full and fair value." This requirement has been honored in the breach rather than in the observance, and for practical reasons with which we are all familiar.

We have a system today which places many of our citizens in a vulnerable position. Members of this Committee are aware of the various decisions that have been handed down by the State Board of Tax Appeals and by our courts. These decisions state that according to the constitutional requirements property must be assessed at its true value. But when taxpayer A appears before a county or a state board or appeals to our courts and states that his property has been assessed at something like 25 per cent more than the property of a neighbor of comparable value, he finds himself without any remedy. There are a number of interesting decisions on this subject which, in my judgment, indicate the need for change in the language of our present Constitution. For this reason, among others, I am inclined to agree with the recommendations of Mr. O'Brien.

The Legislature should have authority to permit classifications as between real property and personal property, as well as in other instances, when equity requires a different treatment for different types of property and classes of taxpayers. I do not believe in change merely for the sake of change. But if you study, as I know you have studied, our present tax situation, you, too, will come to the conclusion that we have here in New Jersey more than a problem of administration. We have a problem of providing basic language in our fundamental law upon which we can build in the future.

I note that there has been some discussion on the general subject of exemptions. Basically, I regard exemptions from taxation as undesirable. I would, however, be the last person to suggest that we should depart from tradition with respect to the exemption of property used for religious, educational or public purposes. Whatever you may decide, however, permit me to urge that the language adopted be clear and concise, and that whatever exemptions you may provide be definitely limited, both as a protection to the property which you desire to exempt and as a protection to the citizens of the State, who should not be required to meet an ever-increasing tax burden merely because more and more property is not carrying its fair share of the tax load.

Mr. Chairman, I believe we might accomplish more, having made

this preliminary statement, if I were with considerable deference to submit myself to any question that this Committee might care to ask.

CHAIRMAN: Does any member of the Committee desire to ask a question of the Governor?

(Silence)

CHAIRMAN: If not, I might ask the Governor the same question that I asked, I think it was, Mr. O'Brien himself, when he appeared here. The first paragraph of his suggestion reads:

"Property shall be assessed for taxes under general laws and by uniform rules according to classifications and standards of value to be established by law."

That is his suggestion, and the question I asked was whether he was attempting to put into the language of the Constitution what, in the opinion of many, has been read into it by the decisions of our courts under our own paragraph 12, wherein they have said that we may, or the Legislature may, classify property. Is that your idea of what Mr. O'Brien meant? Do I make myself clear? In other words, under the present paragraph 12 it reads:

"Property shall be assessed for taxes under general laws and by uniform rules according to its true value."

The courts have said that the Legislature has the right to classify certain property if it is in the general class. When Mr. O'Brien puts in the words, "according to classifications and standards of value," is he attempting to put into the new Constitution those matters which the Supreme Court, or the Court of Errors and Appeals, has written into the present Constitution?

GOVERNOR DRISCOLL: Well, of course, I do not know exactly what Mr. O'Brien was intending to do. My intention is very clear, and it is this: to give to the Legislature elected by the people broad authority to adopt a general tax program that will be equitable and will spread the tax burden fairly among all taxpayers. Undoubtedly, the Chairman of this Committee is familiar with the fact that there are many attorneys who seriously question whether or not some of the decisions of our courts may not at some future date be at least modified. Accordingly, I assume that it is desirable to remove some of the doubts that presently exist with respect to the right of the representatives of our citizens to change, from time to time, the tax program to meet the requirements of the State and its political subdivisions.

On that point I should like very much to refer to that portion of my inaugural address where I touched on this great problem of taxation, and say to the Committee that I have not changed my position. I recognize the ever-increasing needs, for example, of our municipalities. I would hope that under a modern tax structure we would be in a position to make our municipalities reasonably

secure, both in respect to their tax bases and the steady flow of income that could be expected to accrue from those bases. But, by the same token, if we succeed in our objective to give to our municipalities, large and small, a degree of security that they do not have today, it must not be done at the expense of revenues that the State Government is presently collecting.

I do not believe that we should impose a tax on inventories at the present very high local tax rate. It does not encourage business to come to New Jersey or to maintain large inventories, and inventories are the basis for employment and production. Query: Can we, under the language in our present Constitution, classify tangible personal property to exclude inventories, but retain other tangible personal property on the tax rolls?

CHAIRMAN: In other words, under the present Constitution the court has said that you may make certain classifications. But the court has to pass upon the classifications. Whereas, if you use the O'Brien clause and put the word "classification" in the Constitution, you then may broaden your tax base either locally or state-wide and have, perhaps, a more favorable decision from the courts, they not having then to say whether it is classified or not. This broadens the power of the Legislature to spread the base of taxation and perhaps relieves the court of deciding what the Legislature might do.

GOVERNOR DRISCOLL: In other words, Mr. Chairman, I believe that it is preferable for this Convention not to close any tax doors that the Legislature elected by the citizens may from time to time feel compelled to open, even though I personally would be very much opposed to the opening of such tax doors. One of the questions that was asked me immediately upon my return yesterday from a Governors' Conference at Salt Lake City was whether or not I favored an income tax, and whether the language that has been recommended would permit an income tax. I said, "I have just returned from a conference where I have been opposing the invasion of the income tax field by the states, and hope that within the reasonably near future the states will all withdraw from the field." This, however, is not the issue before this Convention. The issue is whether or not we can, in very brief, clear, concise language, lay the foundation for a flexible tax system—the system to be adopted by the Legislature in the future.

CHAIRMAN: Well, I might say for your relief as Executive that the experts who have come before us say that we can have an income tax under our present Constitution as well as this proposal, so we are not broadening the base in that respect as far as the experts think, which would keep you in line with your decision at Salt Lake City.

GOVERNOR DRISCOLL: That is a very good statement, because it gives me an opportunity to say that I would not oppose language that could be construed in the future to permit an income tax. In this respect my position is somewhat the same as it is with respect to so-called dedicated funds. I am personally opposed to dedication, as that term has been commonly interpreted here in New Jersey. I would be opposed to any prohibition in a fundamental document against diversion. Therefore, while I am opposed to the income tax at the state level, I would not, however, oppose a document that authorities, constitutional and otherwise, would interpret as permitting such a tax, provided it was adopted by the duly elected representatives of the citizens of our State. I would oppose a document, however, that left that issue in doubt. I think it is not desirable that these great questions of taxation be constantly clouded by substantial doubt as to whether the Legislature may or may not do something in the future.

CHAIRMAN: Any further questions? Mr. Lightner.

MR. MILTON C. LIGHTNER: Governor, I understood you to refer to the fact that we are today accomplishing certain tax purposes by statute with respect to which you used the words "indirection" and "subterfuge." I presume that that refers to some of the statutes which, perhaps, have some measure of classification of taxable property or something of that kind, but I would like very much to have an illustration of what you were referring to when you used those terms.

GOVERNOR DRISCOLL: I do not think I used the word "statute" in my statement. I had reference, for example, to a decision which is rather typical of what is going on in this State, that of *Hakes v Township of Chatham*, reported in 37 *New Jersey Law Journal*, page 250, in which, as I remember, the State Board of Tax Appeals said: "We are equally well satisfied, however, that similar property in the same locality has not been assessed at anything like its true value."

The members of the Board who heard this case made a personal inspection of the land and buildings affected by the assessment under review, as well as the land and buildings used by the petitioner as a basis of comparison. This inspection disclosed a condition of inexcusable discrimination. Under the law, we cannot remedy this injustice by reducing the assessment upon the petitioner's property. We have not, at present, jurisdiction to raise the other assessments.

We are well aware of the fact, I believe, that in a great many instances tangible personal property is either not assessed at all, or if it is assessed, it is assessed at values far below true values. We do this, as I have said, for very practical reasons. We are, how-

ever, still subject to so-called "tax lightning" in the State, and I think we are subject to it very largely because of the requirement that the assessment be the true value.

When I used the word "subterfuge," I was referring to the practice here in our State that is followed by a great majority of our assessors. They assess land at full value in municipality A and improvements on the same basis, but assess tangible personal property at a fraction of its true value. In municipality B they appraise land and improvements at their full value and arbitrarily say, "Well, 75 per cent of that represents the assessment figure." That is done in some instances because of competition for new ratables, as well as for other reasons. I think those practices support the statement that we are trying to do by indirection what I believe we should be able to do directly. In other words, in this new Constitution I would formalize and give constitutional support for some of our better traditions that we have here in the State.

MR. SIGURD A. EMERSON: Governor, under the present tax clause in the Constitution, I believe there is considerable doubt as to whether or not you could impose a graduated income tax. If we adopted the language of the O'Brien clause, I suppose it would make it possible to impose a graduated income tax?

I know what your views are, because you very fully expressed them today, but wouldn't that clause be tantamount to an invitation to the Legislature to impose a graduated income tax in New Jersey?

GOVERNOR DRISCOLL: Well, Mr. Emerson, as you have indicated, there is considerable doubt in the minds of many attorneys as to whether or not the language of our present Constitution permits either: (1) an income tax, or (2) a graduated income tax.

I do not think the change in the language to which you have referred would increase the strength of the invitation to adopt an income tax, which has existed, to my knowledge, for 10 or 15 years. That invitation has existed for a long time. Citizens who live in New Jersey and who are today compelled to pay an income tax in New York State under the New York law would be entitled to credit for income tax paid in this State. Others who are mindful of our needs, particularly in the field of education, have extended the invitation to the State to invade the income tax field. I for one would not fear the change in the language merely because it might result in a renewal of an invitation that has confronted the State for a long time.

No, I have really no concern on that score at all. The Legislature in the past has experimented with many new forms of taxation in this State, and it has explored fields that were regarded as beyond constitutional authority. If sufficient pressure develops in the future, they will do exactly that and then hope the courts will

give them judicial support. Again referring to a tradition, we find that that type of procedure has usually resulted in long and costly litigation and is wholly undesirable.

MR. WILLIAM J. DWYER: Governor, we have had thousands of words delivered before this group, and the only criticism that I can direct at those words in the testimony of witnesses is that there has been no frankness and no revelation of the design for tax levying in back of their pleas.

Now, are we frankly to consider immediately the imposition of an income tax or, in relation to that, as an alternative, a sales tax? Or in what devious path of taxation are we to find ourselves if we change the present Article in the old Constitution?

I think a little more candor and a little clearer pronouncement on the part of those who are weaving words to lure out of us a change might have accomplished more for the purposes of the general Convention after we make our report. There will be a decision on this floor rendered by 81 delegates rather than by this particular Committee, but the testimony has not adduced, so far, any design for tax levying because it hasn't been frankly discussed. There were two philosophies addressed to us and neither one of them was very frank in its revelation of purpose.

GOVERNOR DRISCOLL: Mr. Dwyer, I do not know that you have asked me a question. I think you have made a statement. However, it leads me to make another statement.

I respectfully suggest that this Convention is not the proper forum for the discussion of tax programs. This Convention is the proper forum for the discussion of a basic statement to be incorporated in a fundamental document that will permit the Legislature in the future intelligently to discuss the various tax opportunities that may be considered in order to meet the specific needs of our State in a particular era.

So far as I am personally concerned, I am not prepared at this time to recommend a new tax program to this Convention. I have made certain very definite recommendations in the past on that subject, and I have a number of men who are working on that subject. It is not a partisan subject. It should not, in my opinion, be a political issue. It is basic. But it is not a problem that requires the attention of this Convention other than to be sure, so far as it is humanly possible to do so, that the proper basis for a fair system of taxation is provided.

You may ask for an interpretation of that. I would not expect this Convention to adopt some of the provisions that have been found in other constitutions which are very discriminatory among various classes of citizens, but other conventions or other drafters of constitutions have. Your task is to protect us against that type of

discrimination being embalmed in our basic document.

CHAIRMAN: Any further questions?

(Silence)

CHAIRMAN: If not, I want on behalf of the Committee to thank the Governor for appearing here at our request, and I want to say personally that I think the witness has shown more candor and practice than any other we have had.

GOVERNOR DRISCOLL: Thank you very much, Mr. Chairman.

I am prepared to be completely frank on this subject. I am not advocating a change because I have a new tax proposal that I wish to spring upon the State of New Jersey. I advocate a limited change because my review of the history of taxation here in the State of New Jersey, in my judgment, demonstrates the inadequacies of our present system.

I do not think you can support a system that leaves citizen A, who is paying 25 per cent more tax than citizen B, although they occupy similar homes and have substantially the same means, in a position where he cannot obtain redress. How can you defend such a system? It is because of my concern with the faults that appear in page after page of our law reports, and have appeared over a period of many years, that I feel that we ought to in some manner change the present wording in the present Constitution.

I leave it to you to choose the particular wording that will best meet our future needs. I am not here as an advocate of any particular tax or any particular tax system. Nor am I here defending any particular group of taxpayers, be they large or small. In my judgment, each ought to pay his or its or their fair share of the cost of government. Our problem is to insure equality of treatment, equity for all, and to give to those who will be elected in the future an opportunity to accomplish this; and if they don't accomplish this, to resort to the time-tested method of turning out the rascals and electing a group that may too soon acquire that tag. I speak now as a former State Senator, not as Governor.

CHAIRMAN: Thank you very much, Governor.

We also want to thank the Committee on the Executive for their time. Senator Van Alstyne and members, thank you very much for letting us have your time.

MR. DAVID VAN ALSTYNE, JR.: Will you please announce that our Committee will start debate immediately?

CHAIRMAN: The Committee on the Executive will convene immediately.

This meeting is adjourned.

(The session adjourned at 12:00 noon)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON TAXATION
AND FINANCE

Tuesday, August 5, 1947

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

PRESENT: Cullimore, Dwyer, W. J., Emerson, Lightner, Milton, Murray, Rafferty, Read, Streeter, Struble and Wene.

Chairman William T. Read presided.

CHAIRMAN WILLIAM T. READ: The Committee will kindly come to order. At the request of President Clothier and others, we thought we ought to have a final hearing here. Some of the other Committees have had them on their tentative drafts. We did not feel so, but we don't want to preclude anybody from having a hearing. This is no Star Chamber committee or convention, and, therefore, I asked Dr. Clothier to announce a committee meeting today at two o'clock. I want to thank the members, some of whom had made other arrangements, for remaining over.

I will ask Judge Rafferty, the Secretary, to call those who have requested a hearing. If possible, I would like to hear those who haven't been heard at all on any subject. I would suggest that you don't talk too long. Mr. Morgan Baradale is here on a matter which we did not cover in our report on the public libraries. We had a very excellent exposition on the subject by a lady who appeared here. Morgan is here and wants to be heard on that. Will you say a few words to us, Morgan, on the public libraries?

MR. MORGAN BARADALE: Mr. Chairman, ladies and gentlemen:

I believe this matter has been before your Committee for some consideration previously. Since that time we have come to the conclusion that possibly we might make another suggestion in connection with the proposal that we have.

The Convention which met over 100 years ago to formulate the Constitution under which we are now working had presented to it the major problem of public education. It came at a time when the forces which had been operating in the State for the establishment of a public educational system had triumphed, and they succeeded in getting into the present Constitution a provision with respect to the maintenance and support of public education. If you look through the records of that Convention, you will see that there was

considerable opposition on the part of some delegates to the placing a matter of that sort in the Constitution, because it was felt at that time that it was not germane to constitutional law. However, it was put in, and since that time we have seen a very remarkable development in that particular function in public service.

We are all aware of the tremendous interest generally in education. We are all aware of the influence which it has had in the development of our democratic form of society. During the intervening years there has been developed another agency of education, and it, too, has had to pass through the years of struggle to develop as a public agency, and that is the public library. Libraries originally were under private auspices, but at time went on and the general public became more interested in them and in the results of their activities, they have been accepted as a public responsibility. Today, not only in New Jersey but throughout the country, we have many famous institutions in the way of free public libraries.

As a past president of the Public Library Trustees' Association, I have been more interested, possibly, than some others might be, but I have been greatly impressed with the growth of the work, the sincerity of those who are in it, and the rapid increase in public support. Our proposition does not call for the inclusion of the free public library on the basis of the free public schools as we find it in our present Constitution, calling for maintenance and support through public funds, but rather the recognition of the free public library as an agency of public education. Our suggestion is this: that if you will take Section II of your report, in paragraph 1 (a) under your Committee Proposal, in the first line of paragraph 1 (a), if there were put in after the word "provide" four or five words:

"The Legislature shall provide for public libraries and museums and for the maintenance and support of a thorough and efficient system of free public schools, etc."

The State has already recognized through the Legislature the coordinate interest of public libraries and public education. You will recall that in a session of, I think, 1945, there was passed the act which coordinated and merged, consolidated, all of the agencies of education on the state level. Among the groups that were affected by that legislation was the Public Library Commission. It was continued as an advisory board, as an advisory committee, to the State Department of Education.

I think that the Committee might well take into consideration the recognition by the Legislature of this fact that the two agencies are coordinate and are part of a very important part of our public enterprise. We would, therefore, submit that the Committee make a favorable recommendation for the recognition of the public library

as an instrumentality of public education coordinate with the public schools.

Thank you.

CHAIRMAN: Thank you.

MR. JOHN J. RAFFERTY: Mr. John F. O'Brien, of the New Jersey Committee on Constitutional Revision.

MR. JOHN F. O'BRIEN: Mrs. Streeter, and gentlemen of the Committee:

Having appeared twice before, I come before you today with a great deal of reluctance. But, frankly, my only reason for coming is in attempt to make you change your mind, with the added desire of clearing up the reasons behind the proposal for the introduction of the classification principle.

You will recall that when Governor Driscoll came before your Committee, Senator Read asked him, as I recall, what was in the mind of the proposers of this principle. Governor Driscoll said he did not know what was in Mr. O'Brien's mind, but he knew what was in his own mind, and I want to tell you now what was in my mind. I will read this brief statement first (*reading*):

"I also wish to clear up any misunderstanding which may exist in your minds with reference to the reason behind our proposal for the elimination of the 'true value' provision and the substitution of the classification and standards of value principle. Let it be said very emphatically that in making this proposal our Committee had no hidden designs to open the way for income taxes or any other form of so-called new taxes. The Legislature apparently has that power now. Experts before this Committee have testified to the fact that there is but one limitation upon the Legislature in the matter of taxes; it is free to tax or not to tax; it may exempt or not exempt; it may classify property for tax purposes and apply different rates or methods to each class. The only limitation is that when real property is assessed, it must be assessed 'according to its true value.' The sole purpose of our committee and of all its participating organizations is to remove that limitation, and for the following reasons:

In 1945 the Legislature created a permanent agency known as the Commission on State Tax Policy, and I quote the following two paragraphs from the law creating the Commission:

Paragraph 3. 'The commission shall engage in continuous study of the State and local tax structure and related fiscal problems, with particular attention to (a) all laws relating to the assessment and collection of taxes in this State; (b) all proposals for change in such laws; and (c) the impact of Federal tax laws on the State financial structure.'

Paragraph 4. 'The commission shall determine the respects in which the existing tax laws may be simplified, modified, rearranged, consolidated and revised to insure greater efficiency in the assessment and collection of all taxes.'

As far as our committee is concerned, the issue surrounding the changing of the tax clause narrows down to this: Shall this Constitution say to the Legislature and to the Tax Policy Commission, you have complete freedom to do anything you wish with respect to improving the assessment machinery in this State with this one exception: the present method of assessing real property must remain as it is; the only limitation we place upon the Legislature is that it shall provide no other method of assessing real property than upon its true value?

What justification is there for this Convention to continue this limita-

tion when you consider that real property does not exceed more than one-third of the total property wealth in this State, and this year, under this assessment system (which, I believe, has been condemned but certainly not praised by every competent witness before your Committee) real property is called upon to produce an all-time high in tax revenue of close to \$300,000,000?

Now, if the Legislature is considered competent to provide an equitable system for personal property, which as I say, exceeds tremendously the value of real property, why should it be considered incompetent to provide an equitable system for real property? Surely not to assure an equality of burden, because gross inequality exists under the present clause; surely not to prevent preferential treatment, because preferential treatment has also been given under the present clause. The only possible justification is the philosophy that real estate has always produced the bulk of our tax revenue and those taxes have been assessed on the true value basis. That would not be so serious if real estate ownership today occupied the same position in the tax structure and from an assessment standpoint as it occupied in 1875 when that 'true value' provision was added to the Constitution. It would not be so serious if the homes of our people did not constitute so dominant a part of the real estate tax structure today, and with the vast majority of those homes only partly owned by their technical owners. As an illustration of what I mean, let me point to the thousands of veterans who have purchased homes during the past two years with 80 to 100 per cent mortgages in order to secure shelter for themselves and their families. To continue the 'true value' limitation is to deny to those veterans and to the vast army of small home owners in this State the right to have their tax position examined and improved by the State Tax Policy Commission which was created for that very purpose.

It must be remembered that we are writing a new Constitution, and to carry this old clause unchanged into the new draft will be to give the stamp of approval to an assessment method which produces possibly the heaviest tax resting on home ownership that exists in any state in the Union.

I remind the Committee that both Dr. Sly, chairman of the Tax Policy Commission, and Commissioner Zink have endorsed the proposal of our committee. Governor Driscoll has done likewise, adding the pledge that if given a flexible tax clause he will recommend an equitable tax program. Former Governors Edge and Edison both recommended the elimination of the 'true value' provision. If I remember correctly, former Governor Moore did likewise three years ago. In addition to that is the approval of the important state-wide organizations comprising the Committee for Constitutional Revision.

In the name of those organizations I appeal to your Committee to change its decision to recommend the retention of the existing clause. If it cannot agree to recommend the clause proposed by our Committee, I earnestly suggest that both clauses be referred to the full Convention without prejudice to either."

Now, members of the Committee, if you will just give me a moment more, I am inspired to say this because of an editorial that appeared in last night's *Newark Evening News*. It somewhat crystallizes what I have heard around this Convention during the last several weeks. This paragraph appeared (*reading*):

"In the absence of formal words from the committee majority, it may be assumed that it backs the true value provision because it is uncertain of the effect of other proposals, that it prefers to risk continuance of existing inequalities in real estate assessments in order to avoid other and unknown pitfalls."

Now, that is an editorial, not your sentiments, of course. But, as

I say, it crystallizes what I have heard, and in view of the fact that the phraseology of our clause is my phraseology (I drew it, word for word), and in view of the further fact that the classification theory was brought by me on behalf of the New Jersey Association of Real Estate Boards five years ago—it is not new; it hasn't been injected into this Convention as a new one—I just wish to read to you two paragraphs from the brief that I originally submitted in presenting the proposals (*reading*):

“Property shall be assessed for taxes under general laws and by uniform rules according to classification and standards of value to be established by law.”

And then follows this additional paragraph to try to clarify that meaning. Now, the phraseology was adopted by me for this purpose: I was after unambiguous language. I realize that the language that is adopted by this Convention is going to be the source of judicial interpretation for another hundred years, and I wanted to avoid, so far as possible, any ambiguity, so that when we are all dead some court is not going to search for what we meant when we wrote it. (*Reading*):

“In creating such classification and establishing the standards of value for each, the Legislature will give due consideration to the type of property, its earning capacity, the public services it receives, and its relationship to the welfare and stability of the State and its subdivisions.”

Now, my thought in this, and it is not a haphazard thought—it has come from many years in the real estate business and many years in the assessing business—is that I want this Convention not to prevent an exploration of the real estate tax structure by the Tax Policy Commission. If you ask me, “Well, what do you mean by classification and standards of value?”, I mean this: All real estate today, regardless of type, regardless of earning capacity, regardless of the ability to pay taxes, is assessed on the same principle of true value. Now, it may possibly be that when the Tax Policy Commission examines the tax structure, it may decide that that is the only way to assess it. If so, I am perfectly satisfied. But to give you my thought of what might eventually develop out of a more enlightened method of assessing property than at its true value, I will just use the illustration of an apartment house. An apartment house today is assessed at true value. It doesn't make any difference whether it is vacant, whether it is well constructed, or whether it is poorly constructed. I would hope that in some years to come—not overnight—that it may after careful study be decided that an apartment house might better be assessed on its gross earnings. Factory buildings—factory buildings make real contribution to the welfare of the community by providing payroll. It may possibly be that after careful study by the experts in the Tax Policy Commission, it might be deemed advisable from the viewpoint of the State to treat the fac-

tories of our industries, the real estate of our industries, on some other method than true value. With relation to homes—and it has been in my mind for the 20 years that I have been interested in the subject; it is the impact of the true value provision on the home that has brought me to the position today where I consider it a most inequitable and destructive method of having home owners pay taxes—homes might be treated on an occupancy basis. I merely throw these thoughts out to give you what is in my mind under the classification theory.

Now, the pitfalls that this editorial speaks about are what? The pitfall of new taxes? I don't know why anyone should be afraid of new taxes. I also am opposed to new taxes. However, there were \$30,000,000 in new taxes imposed by the State of New Jersey on real estate in 1947. These taxes are not considered a pitfall, however. They are acceptable because it has always been done that way, but the irony of the fact is that that \$30,000,000 worth of new taxes is impressed upon that one group, and on that one type of property in the State, which has had new taxes imposed on them almost every year. Every time a tax rate is increased, there are new taxes imposed on real estate.

I have made this brief explanation to you to try to assure you that New Jersey does not need new taxes—it needs new taxpayers. And my theory is that with the studies of this permanent Tax Policy Commission, created for the purpose, in the classification of various types of real estate for tax purposes, it is very possible that revenues may drop from this \$300,000,000 high of today. It is the Legislature's problem to see how that lost revenue is to be replaced. I am not for new taxes. I am for the restoration of some of the old taxes that have been taken away from the ratable structure. As an illustration, the intangible tax on individuals of two years ago could be brought back gradually under some new form. It was taken away to get it from under the "true value" clause, and properly so. It could be brought back under some reasonable system or method of assessment having something to do with the ability of a particular type of property to pay the taxes, to make up for any lost tax revenue.

Ladies and gentlemen, that is what I wanted to say today. I hope I have made it clear, and if there is any thought in your mind that I haven't answered the question, or that I have been evasive in any way, I am here to answer any questions at all, because I am greatly interested in this thing from many angles, the least of which, I assure you, is to reduce the real estate tax that is imposed today. I just want a more equitable system of assessing that one segment of property which your Committee's decision to retain the true value clause would keep away from the study of this great agency.

CHAIRMAN: Mr. Lightner.

MR. MILTON C. LIGHTNER: Mr. O'Brien, I may have misunderstood one of the first statements that you made, but I understood you to say that the true value clause, as it now stands, applied only to real property.

MR. O'BRIEN: Oh, no. It applies today to real property and to tangible personal property. But I point out to you that despite the fact that personal property, both tangible and intangible, in this State far exceeds the value of real estate—you can see the relative tax position of the capital invested in personal property, personal wealth, and the capital invested in real estate wealth, by the fact that it was estimated some years ago, and I presume the picture remains the same today, that property taxes amount to about a million dollars a day in this State, that is, \$365,000,000 a year. Now, you've got to conceive the position of the real estate taxpayer when \$300,000,000 of that total is produced from real estate other than railroads. I have thought also, Mr. Lightner, of this fact that—

MR. LIGHTNER: I merely want to get the record straight, because you referred throughout your entire address, you kept referring to real property—

MR. O'BRIEN: That is true.

MR. LIGHTNER: And I understood you to refer to this clause as applying only to real property.

MR. O'BRIEN: That is where the full application rests today, for all practical purposes. The second report of the State Tax Policy Commission takes tangible personal property from under the true value clause if the Legislature enacts its proposal, so the State is faced with true value application only to real property.

MR. LIGHTNER: And the one effect of the true value clause in the Constitution has been to relieve other types of property from taxation because it was not feasible to tax it at true value?

MR. O'BRIEN: That apparently is the reason, yes. That apparently is the reason because, after all, you take a four per cent investment; certainly it isn't feasible or sensible or safe to apply a five per cent or six per cent tax rate, so it went into hiding until the Legislature took it out completely.

MRS. RUTH C. STREETER: Mr. O'Brien made reference to that editorial in the *Newark News* last night which I just carry in mind, but it seems to me that it suggested the possibility that the present tax clause might be left the way it is except for cutting out those last words, that property shall be taxed under general laws and uniform rules—period, leaving out the true value. What, in your opinion, would be the effect of that?

MR. O'BRIEN: Well, the effect of it would depend entirely on the interpretation placed upon it by the courts. Now, it may possibly be that with the absence of anything else, it might be implied

that the Legislature had a free hand. It could do anything it wished to, but when you consider the vast range of real estate, whether it be factory, vacant land—all vacant land is real estate, of course—the different types of improvement: factory, apartment building, income-producing property, homes, and so forth and so on, it might be possible for the courts to construe that all real estate is one class, you see, so that all real estate would be impressed with the same method of assessment.

MR. LIGHTNER: That it would not be a general law?

MR. O'BRIEN: After all, what we are trying to do is interpret what some judge is going to say 50 years from now. Classification is an established thing in this State today, even real estate classification under the railroad tax legislation. I see no reason in writing a new Constitution that that established practice not be given formalized status in the case of both real and personal property. All types of personal property are not assessed the same. There are different methods, different rates.

MRS. STREETER: Well, in other words, Mr. O'Brien, it would not meet with your objection to the present situation merely to cut out those words "at true value"?

MR. O'BRIEN: It would only hurt future interpretation. I don't mind telling you, however, that I would like it far more than the retention of the "true value" words.

MR. ALLAN R. CULLIMORE: Your feeling, then, would be that while the classification clause is the ideal thing, merely the removal of the "true value" phrase might be a point on which a compromise could be carried out?

MR. O'BRIEN: Possibly.

MR. RAFFERTY: Mr. Ormonde A. Kieb, representing the New Jersey Association of Real Estate Boards.

MR. ORMONDE A. KIEB: Mr. Chairman, and ladies and gentlemen:

My appearance here today is on behalf of the New Jersey Association of Real Estate Boards, representing more than 1,500 New Jersey realtors from every county of the State. They have been disturbed—

MR. LIGHTNER: Do you represent something different than Mr. O'Brien?

MR. KIEB: Oh, yes!

MR. LIGHTNER: What do you propose?

MR. KIEB: Well, I am here to urge you to change your minds, because I have become disturbed over your findings. I'm very much in the same position as Mr. O'Brien, and I agree with him. But I think you should know that these people in the State who are intimately affected by real estate taxes think you should too, and they have asked me to come. I hope you will give me an opportunity to

finish, and I'll try to hurry. I think you should know also, that for every member, there is an average of four to five employees, eight to ten painters, carpenters—

MR. RAFFERTY: Mr. Kieb, I wonder if you could state your point and then talk on the point.

MR. KIEB: Briefly, my point is this, gentlemen. We are asking you to eliminate the "true value" phrase from the Constitution and to provide for classifications and standards of assessment and determination of property values, and to keep tax exemptions to a minimum. Those, briefly, are my points and they will develop as I go along.

MR. LIGHTNER: Do you have any specific clause that you can provide?

MR. KIEB: No, I have no answer, and I don't want to tell you gentlemen what to do specifically.

MR. WILLIAM J. DWYER: Did you read the copy of the clause that was submitted?

MR. KIEB: I have read only a portion of it.

MR. DWYER: I think you will find that we have covered some of the points to which you might raise objections. I think we have them covered to your satisfaction, if I follow your line of thought.

MR. KIEB: I hope you have, sir. I want to tell you what the real estate boards are after. I want to tell you, first of all, that their work as real estate brokers, managing agents and mortgage representatives, real property appraisers and developers, brings them into an intimate daily contact with the real property taxpayers of this State. They are a representative and constructive force. By the nature of their business, they are community builders and developers. They sell land, develop, build, finance, sell and rent homes. They bring industry and business to the State. You will find them in almost every charitable, civic, planning and community building movement. Their business is an old and honored one. Their practical experience in the field of real property taxation is great and of long standing. Their opinion in this matter, given without the sole intent of self-interest and without political background, should be of some value to you gentlemen in your difficult considerations. They have not appeared before you prior to this, and I may mention that one of the best informed tax experts in New Jersey is one of their members.

MR. SIGURD A. EMERSON: Who is he?

MR. KIEB: John O'Brien.

CHAIRMAN: That's what we're after. We're trying to cut this so that everyone will have a chance to speak.

MR. RAFFERTY: You are merely endorsing Mr. O'Brien's opinion on the matter, is that the point?

MR. KIEB: In order to save time, gentlemen, I have given you copies, and I can save time if you'll just promise me that you'll read it.¹

CHAIRMAN: We'll do that.

MR. KIEB: I'll also ask you this—has the Legislature, in its wisdom, seen fit to classify other forms of taxable property in the State of New Jersey, so as not to prevent them from carrying on that same program in the future as it may relate to real property? Apparently they have run into difficulties as they have attempted to classify real property, and the question of true value is one upon which many experts disagree and it's controversial. True value, as it is applied to property owned and occupied by a user, is much different than when applied to a property that is developed for inconsequential purposes. There are different classifications, there are different uses and there are different results, and I beg you, in the name of these men in the State and the home owners of the State, to reconsider the possibility of eliminating true value.

MR. EMERSON: Mr. Kieb, did you poll the members of your association to get their views?

MR. KIEB: Our association has been on record for the elimination of "true value" and for the establishment of classification standards since 1942, and at our convention last December we reiterated that stand and that position so that it might be presented here as representative of the entire group.

MR. EMERSON: From the statement that you have presented, it appears that you are also speaking for employees, painters, carpenters, contractors and home owners.

MR. KIEB: I'm sorry if I gave you that impression, sir. My purpose in mentioning that was to illustrate their closeness to the people who own real estate and pay taxes.

MR. EMERSON: You're not speaking for those groups?

MR. KIEB: No, sir.

MR. EMERSON: Would you be satisfied if there was added to the present tax clause the proposal of the League of Municipalities that "the burden of direct taxation upon all real property not exempted shall be equal"?

MR. KIEB: I'm not sure that's the final answer. I am much more convinced that the removal of the "true value" clause would permit the Legislature to give us the standards and classifications that we need.

MR. RAFFERTY: Mr. William E. Dickey, speaking for the New Jersey Taxpayers Committee to Preserve Separation of Church and State, Presbyterian Church, U. S. A.

MR. WILLIAM E. DICKEY: I would like to introduce Mr.

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

Weidner Titzck, chairman of our committee, who will speak for us.

MR. WEIDNER TITZCK: I might say that I represent the New Jersey Taxpayers Association, which was formed primarily to protest the decision of the United States Supreme Court as well as our New Jersey court in the case of *Everson v Ewing Township*, involving the transportation of students to schools with public funds.

MR. LIGHTNER: You used the expression, "New Jersey Taxpayers Association"—

MR. TITZCK: The New Jersey Taxpayers Committee.

MR. LIGHTNER: Has that committee for which you speak any connection with the Taxpayers Association?

MR. TITZCK: No, sir. This organization was composed of a number of groups who are interested in this problem.

MR. LIGHTNER: How long ago was it formed?

MR. TITZCK: In May of this year.

MR. LIGHTNER: Where?

MR. TITZCK: In Camden County.

MR. LIGHTNER: How many members?

MR. TITZCK: We held a public mass meeting and contacts were made with various organizations—for example, the Patriotic Order of Orangemen, the Junior Order of American Mechanics, a number of religious organizations. In fact—

MR. LIGHTNER: I don't want to press you with questions, but if you're speaking on behalf of some organization, I for one would like very much to know more about the organization that you are speaking for. If you are simply advancing certain views to stand on their merits, then I don't want to bother you with those questions.

MR. TITZCK: I understand. I was appointed at a mass meeting as chairman of a legislative committee, with authority to take certain steps to correct the situation which was primarily started by chapter 191, *Laws of 1941*, providing transportation in New Jersey for school children in other than a public school. In that authorization, I might say, we were given the authority and were instructed to follow the New Jersey Constitutional Convention and to make such suggestions to the Convention as we saw fit to carry out this policy of the separation of the Church and State.

MR. LIGHTNER: You are speaking for the people that were present at that mass meeting?

MR. TITZCK: That's correct.

MR. LIGHTNER: And how many were there?

MR. TITZCK: There were over 500. I might say that I also represent the New Jersey Council of Christian Churches, which is associated with the American Council of Christian Churches. The number in that group I am not prepared to state, but they authorized me to come up here to take the position that that body has

adopted on this particular issue.

MR. LIGHTNER: That is not to be confused with the Federal Council, is it?

MR. TITZCK: No, that is not to be confused with the Federal Council. I might say that Mr. Dickey has been given authority to present the Presbyterian Church, U. S. A., specifically, and I might say that other large denominations would probably be here had this matter not come up so suddenly and right in the middle of the summer. Most of them are away, but I've been in communication with some of the other organizations and they have given me that impression. Now, the point that I make—

MR. LIGHTNER: May I ask a question? You are appearing for the Presbyterian Church also?

MR. TITZCK: I am not. Mr. Dickey is. He has been specifically authorized.

MR. LIGHTNER: Is that the parent church, or just the various local churches in your vicinity?

MR. TITZCK: The New Jersey Branch of the Presbyterian Church, U. S. A.

MR. LIGHTNER: Has that been adopted by the various churches?

MR. TITZCK: I do not know. I cannot say whether the group is large or small, but I think I can fairly state that I represent a very good cross-section of the feelings throughout the State regarding this problem. I have been advised upon reliable authority, that when the United States Supreme Court decision was handed down, the clerk received more communications than were received for any other decision they had in their records. I point that out here to show that it is a very controversial issue.

This Committee has probably overlooked the fact that this is just as important in attaining an approval of a Constitution as these other issues, such as your tax clause and your gambling, which have been greatly paraded in the papers as being controversial issues. While there might not be a great number of large organizations up here high-pressuring this Committee for some sort of action, I'm satisfied that there are many citizens back in their homes who are interested in this particular problem because they have never had an opportunity to vote on it. The New Jersey Legislature passed a provision in 1941 much before many of the people in this State knew what was going on or what had happened, and as a result we had these various court decisions and the 5-4 decisions of the United States Supreme Court. The comment it has aroused throughout the country indicates that the court may change its decision.

Now, you have apparently discussed all these things and arrived at this clause in your committee report. I followed your reports and

your change from one position to another. The point that I make is this: I'm not here to argue what is the right of a Catholic or a Protestant, or the right of any religious denomination, but I'm here to point out that this issue is such an important issue for the future of our State and for the adoption of the Constitution that I think we should give it a little bit more reflection. This provision, which you have inserted, provides that "the Legislature may, within reasonable limitations, provide for the transportation of children between the ages of 5 to 18 years inclusive, to and from any school." That includes any and everybody. I don't need to argue the merits of what that might include, considering everybody, but I am primarily concerned with the fact that it includes religious groups, whether they are Protestant, Catholic or Jewish, and it violates a very fundamental principle of our country.

I don't need to call your attention to the fact that the majority of opinions follow that of Mr. Justice Black, who enunciates the principle by stating, "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." True, you say the Supreme Court has acted on the matter and they determined that—

MR. EMERSON: Is the Chief Justice referring to some constitutional provision of the Federal Constitution?

MR. TITZCK: That is correct. In other words, he is stating exactly what the establishment of a religion means, and it was upon that basis that they finally decided whether or not this particular act, transporting school children, involved a violation of that clause.

MR. EMERSON: Is that the fundamental principle that you are referring to?

MR. TITZCK: Correct.

MR. EMERSON: If this isn't confined to the Federal Constitution, why prolong the matter, no matter what action this Committee takes or this Convention?

MR. TITZCK: That may be true, but let me go a step further. Are you being fair with the people of the State by providing one side of the issue? I understand that you had under discussion the submission of a referendum on the question. I personally feel that this clause which you have inserted should be entirely eliminated, and a clause something similar to what I had proposed to the Bill of Rights Committee should be inserted in its place. I don't know whether you all received copies of my report to the Bill of Rights Committee but I intended that you should have them. Unfortunately, the Bill of Rights Committee, as well as the Legislative Committee, referred these matters about which I'm speaking to this Committee, therefore, I never had the opportunity to present the case to

you in the first instance. I would have presented it that way rather than come in the back door, but we don't have any control over these things. Now, the proposition that I proposed was (*reading*):

"No tax shall be levied or appropriation of public money or property made by the State or any subdivision thereof, either directly or indirectly, except for a public purpose, and no public money or property shall be appropriated, applied, donated, or used directly or indirectly for any sect, church, denomination or sectarian institution."

That would cover paragraphs five and six that you have inserted in your first section—in other words, what are now paragraphs 19 and 20 [of Article I] of our Constitution. Now, my provision itself, I think, would be sufficient to make it clear that no public moneys could be used for religious school purposes. If there is some question about it now, I think that this Committee and this Constitution ought to settle it once and for all.

The other provision, which falls in place of the provision which you have inserted here and which I had intended to add to the school fund provision has, I assume, been incorporated as it was. I haven't read that carefully. I just received this copy. I would add this statement (*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."

Now, that is the opposite of this position and it makes it clear.

MR. EMERSON: Does it include Rutgers University?

MR. TITZCK: Well, that I don't know. I don't have sufficient knowledge of what the situation at Rutgers really is to argue that point.

The point that I make is this: I feel that if the people had an opportunity to vote on this question, that the people would align themselves with the heritage of Madison and Jefferson in framing our original United States Constitution and our New Jersey Constitution of 1776. I feel that this issue should be kept clear—that we should never mix religion with the State. It has been the downfall in history of many countries and political organizations and I don't need to go into an argument about that.

But the point I make is this: You're up to the point where you're putting a clause in the Constitution which excludes the people from voting on a very vital issue. If that is the case, then I'm satisfied that the people are going to vote down the entire Constitution. On the other hand, if you come to the conclusion that you still would not be in favor of one of these clauses which I have proposed, it would be only fair and just to the people of the State that you submit the two alternatives to them so that they can vote on either one of these clauses or the clause as you have suggested it. Then you will have

the result from the people, and it doesn't make any difference what the courts decide in the future. You will know exactly how the people in the State of New Jersey feel. This way you've given the authority right over to the Legislature and, with as much respect as we have for that legislative body, I'm satisfied that it would not be fair to lay such a fundamental and important document in the hands of the Legislature.

It's just like anything else. You have a picture of many different religious bodies clamoring for public funds. You say this is only a small matter of transportation of school children. I think children ought to get to school and that's fine, but the breakdown of this principle is just as Justice Rutledge said in his opinion. This was no small class case. The breakdown of this principle and the beginning of this wedge would be the breakdown of our society and our political structure in New Jersey. I'm satisfied that you gentlemen on this Committee are not interested in seeing that picture. Justice Rutledge said this (*reading*):

"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."

MR. DWYER: Would you please recite the organization that you represent and refresh my memory.

MR. TITZCK: I represent the New Jersey taxpayers organized for the purpose of protecting the Church and State, as a result of a mass meeting in Convention Hall in Camden in May 1947. To that meeting came representatives from all over the State. I am not prepared to say what different organizations were there, but I can safely say that many different patriotic, fraternal, civic organizations, and religious groups were represented.

MR. DWYER: Do you mean represented, or the members were in attendance?

MR. TITZCK: They were represented by delegates and by official representation. In addition to that, I might say that I represent the New Jersey Council of Christian Churches.

MR. DWYER: Did I hear you say something about the Orangemen?

MR. TITZCK: The Orangemen? Yes, they have asked me specifically to speak for them.

MR. DWYER: And the Junior Order of American Mechanics?

MR. TITZCK: The Junior Order of American Mechanics was in that group at the mass meeting.

MR. DWYER: Then, philosophically, you stated that the great danger of the recommendation of our proposal is that it will speedily bring about a condition in our government which will endanger us because of an alliance between the Church and the State.

MR. TITZCK: That's the ultimate result.

MR. DWYER: Currently we have been discussing the new co-ordination of society built upon the brotherhood of man. We have been discussing, widely, tolerance and love of our fellow man and cutting out the religious lines in order to perfect our democracy and improve our society—to get away from the old lines of demarcation which bred bigotry and make it impossible for men to live for the sole purpose of being real Americans, instead of dividing the Americans on a religious question. That's the danger to society that I can see. It is much more serious than letting a little kid who has no concept of any religious philosophy or any idea that by the accident of birth he is inhibited from the privilege of riding in a bus, because the father of that child is a taxpayer just as well as the taxpayer who pays for a child to go to public school. So I want to announce here that your proposal makes no impression on me, sir, except to say that I think that I feel very seriously that you have introduced into the society of New Jersey a division along religious lines which is much more dangerous than the danger that you tried to indicate by your proposal this afternoon.

MR. TITZCK: May I answer you? I don't think that any proposal that I made follows that line. In fact, it does just the opposite. I am as much concerned as you or the next person that we have tolerance and that we don't have bigotry. I am also concerned that one way to preserve that tolerance is not to have the support of separate religious schools from public funds. In a public school everybody sits down to hear the instruction of the teacher. They sit side by side, Catholic, Jew, Protestant, and you can have a Mohammedan or anyone in there. I think the principles of tolerance are better instructed and inculcated in our children, and will be for generations to come, in a public school where they do sit side by side and are not segregated, especially with public funds, to be taught some particular religious doctrine so that John Jones feels that Mary Smith is not with him. The very idea of using funds for supporting particular religious schools results in the very intolerance and bigotry about which you speak.

MR. DWYER: Of course, we are not supporting any religious children riding on the bus to school. That is a religious conclusion.

MR. TITZCK: That is a matter of opinion, but some of the most important papers in the country have dealt editorially with it otherwise. The *St. Louis Post-Dispatch* in February said (*reading*):

"If it were a unique and isolated instance, the Supreme Court decision in the New Jersey case might attract little attention. But this decision will not rest on some remote judicial plane. It lends abrupt support to an increasing and subtle encroachment on separation of Church and State. * * *

It goes on to point out that fundamental freedoms of thought and of conscience must never be risked for such a purpose. In the end, we think, that view will prevail with courts and religious leaders, for the principle stands with this republic. The *New York Times*, which is a very conservative organ, points out that (*reading*):

"The vigor with which four justices of the Supreme Court today dissented from the legal reasoning, historical interpretation, and final conclusion of the case concerning publicly paid transportation suggests that this is only the beginning of a grave judicial controversy. This implication arises from the fact that while the majority conceded that the New Jersey statute specifically providing transportation at public expense to 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 much further. 'If the State may aid these religious schools,' commented Justice Jackson in his separate dissent, 'it may therefore regulate them.'"

Now, I don't want to be an alarmist. But after all, ladies and gentlemen, you're preparing a Constitution much the same way as the men were back in 1776, and I think they gave it grave consideration. There were plenty of discussions and debates on the subject. I don't mean to sit here and debate the subject which has been debated for hundreds of years. I feel, as I'm satisfied thousands of citizens in this State feel, that this is such an important issue that if the Constitution goes through with this clause in it, it will definitely be defeated.

CHAIRMAN: Mr. Dwyer wants to question you.

MR. DWYER: We have had that threatened from various directions by people in appealing before our Committee. They have told us that if we haven't acted in conformity with their ideas, that they would defeat the Constitution. We are assembled as a peoples' group trying to work out something that will be for the general welfare of all the people of the State of New Jersey and not in the interest of any special group, and just as soon as we offend any special group in our conclusions, the next thing some paper advertises that we are going to be defeated unless we back them, and not as our thinking and our conscience directed. We are menaced with that. That is not fair play from the outside.

CHAIRMAN: Mr. Lightner?

MR. LIGHTNER: You have given a good deal of consideration to this Supreme Court decision. In your opinion, would the State be free to give school bus service for only public schools and bar others?

MR. TITZCK: Do you mean the present Supreme Court decision?

MR. LIGHTNER: Yes.

MR. TITZCK: The present Supreme Court decision approves the principle that the State may provide support for parochial schools. That was the only issue before it, because it involved the Catholic parochial schools, as I recall it.

MR. LIGHTNER: In that decision there is discussion, I believe, on the limitation in the state statute which prohibits school bus service for schools operated for profit.

MR. TITZCK: That's correct.

MR. LIGHTNER: If the State cannot exclude schools operated for a profit, can it exclude any other particular type of school? That is, is it not a very fair question as to whether the State can provide school bus service for public schools? Or such legislation as that which would be invalid as being discriminatory use of the taxpayers' funds?

MR. TITZCK: I don't think there is any question about that. The support of a school in any fashion publicly is a question of public support, whether it is transportation, or supplying books, or anything.

MR. LIGHTNER: Leaving out the support of schools—this is just transportation of children.

MR. TITZCK: You are getting into the very argument which divides the line. In other words, I don't think that your argument has any real bearing on the question of whether they have the right to support transportation for public schools.

MR. LIGHTNER: That is a point which has been very seriously urged before this Committee.

MR. TITZCK: Certainly I didn't gather anything like that out of the decision of the United States Supreme Court. I haven't a copy of it here. I will be glad to check it, but I didn't get any reflection of opinion like that. Justice Case in our New Jersey decision pointed out that the statute violated at least four provisions in our New Jersey Constitution, including this school fund provision and another provision in the Bill of Rights. As I say, I don't think the issue legally is centered in the courts. True, we have a decision from the highest court, but I feel that sooner or later another situation might be presented to the United States Supreme Court and you may have an entirely different decision.

Be that as it may, it is up to this Committee to decide what the people of New Jersey want. My friend here on the Committee says you are not interested in being subject to pressure groups. I don't want you to be subject to pressure groups or threats. I am merely—

MR. DWYER: You made the threat there and I said I don't think it is fair. I think it is wonderful to have you come in here and argue your case. It is your right. But then to attach a threat that this people's Constitution can't prevail because we will not adapt

ourselves to your special plea, I don't think that is a fair attitude of mind.

MR. RAFFERTY: Mr. Titzck, you stated that the Supreme Court opinion supported the theory, the proposition, that the State may provide for the support of Catholic schools. Is that what you said?

MR. TITZCK: That's right.

MR. RAFFERTY: Well, that isn't true.

MR. TITZCK: That's parochial schools. Being parochial doesn't necessarily mean Catholic.

MR. RAFFERTY: All right, we will substitute the word parochial for the word Catholic. That is not what the decision says, is it—that it might provide support for parochial schools? Just reasonably, Mr. Titzck—we are two citizens sitting here—reasonably, doesn't the opinion say that the State may provide transportation to schools?

MR. TITZCK: That's correct.

MR. RAFFERTY: It doesn't say they may support these schools, does it?

MR. TITZCK: No.

MR. RAFFERTY: So that when you said that you didn't mean that, did you?

MR. TITZCK: No, I made a mistake.

MR. RAFFERTY: I was sure that you made a mistake. I just wanted to correct it.

I am very much interested, Mr. Titzck, in the exemplification of the assumption upon which you rely and the conclusion that you reach, and that is that the providing of this transportation is an aid to religion. Will you be kind enough to tell me what that is?

MR. TITZCK: I can only reflect the—

MR. RAFFERTY: Just tell me yourself.

MR. TITZCK: My opinion would not be any different. I certainly would not be in a position to use the phraseology which these men have. They are experienced.

MR. RAFFERTY: You are relying on the minority opinion in each decision, aren't you?

MR. TITZCK: That's right. Of course there was one opinion in New Jersey which was the majority.

MR. RAFFERTY: You speak of Justice Case, and he wrote the minority opinion.

MR. TITZCK: Yes.

MR. RAFFERTY: But the United States Supreme Court references you made were from the minority opinion?

MR. TITZCK: Yes, but in the Supreme Court of New Jersey

they first had considered the statute unconstitutional. Then the Court of Errors and Appeals overruled it.

MR. RAFFERTY: Yes, that's right. Now would you mind telling me—you represent these folks and organizations—without resorting to the legalistic language of the opinion, will you tell me substantially the support of your conclusion that this transportation that is provided is an aid to religion? That is precisely what I would like to know.

MR. TITZCK: I cannot use any better words than those used by Justice Jackson.

MR. RAFFERTY: Don't you have some opinion yourself, Mr. Titzck? You have no understanding beyond the words in that opinion?

MR. TITZCK: I don't think it requires additional argument.

MR. RAFFERTY: All right, that's all. I know that much and I thought I would explore your view on it. Thank you.

CHAIRMAN: May I say for the sake of the record, there having been no record of the Committee when it was meeting in executive session and considering the various matters before us—when Proposal No. 42¹ was before us, I brought to the attention of the Committee the letter of Mr. John Schenk who had this matter presented to him as it is today by their committee. It was referred to our Committee. I think I also have had letters from Mr. Titzck and Mr. Dickey because they happen to live in my county. They wrote to me as a delegate from their county, as I presume they did to the other three delegates from Camden County, and that was brought to the attention of this Committee. I want to say this because it has some bearing here with this Committee. My recollection is that you sent another letter in which you quoted some constitution of some one of the midwestern states, Ohio or Indiana, which precluded this matter.

MR. TITZCK: That's correct. In other words, this issue went before the people in Wisconsin on a constitutional amendment, and I think it is a fair way to do it. I think it should go as a question of constitutional amendment and not as an attempt to put in one view here, with the people having to decide that they are going to take the whole Constitution with this provision in it or throw out the whole Constitution.

Maybe I am prophesying, but I am not threatening. I believe that is definitely going to impair the passage of the Constitution as a whole. I am interested in this Constitution. I have been up before other Committees; I have been before the Judiciary Committee for the Bar Association. I sincerely feel that if you put this question on a two-plane basis and let the people decide it, that that is the fair

¹The Proposal appears in Volume II of these Proceedings.

way to handle it. I would like to leave with you copies of my report to the Committee on Rights¹. If you have time, I ask that you read it.

CHAIRMAN: May I say this Committee has developed into an old-fashioned committee on American sayings? We have developed "let a sleeping dog lie" and "don't stir up a hornet's nest." But while I am not on that side, I think, at least, the opposition thinks that "you can lead a horse to water but you can't make him drink."

(Laughter)

MR. TITZCK: Thank you very much for the privilege of appearing before you.

MR. RAFFERTY: Mr. William E. Dickey.

CHAIRMAN: You may speak now, Mr. Dickey.

MR. DICKEY: Mr. Chairman, I have been authorized by Dr. Culp, the clerk of the New Jersey Senate of the Presbyterian Church, U. S. A., to appear on behalf of the New Jersey Senate representing 385 congregations in the State of New Jersey having a total membership of 243,000 people in New Jersey.

I would like to reiterate the fact that we are entirely in support of the proposition just submitted by Mr. Titzck. The New Jersey Senate of the Presbyterian Church, U. S. A., has gone on record as being unalterably in support of the proposition of separation of Church and State. I think it would be needless for me to go into the details which Mr. Titzck has discussed so thoroughly with you, but I would like to say this one thing, gentlemen: that I believe that if this Article is left in the Constitution as it is now submitted, that we will be talking out of both sides of our mouth at the same time, and the reason I say that is because Article I on Rights and Privileges, paragraph 3, provides (*reading*):

"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."

It is my opinion, and I believe it is the opinion of the Protestant people of New Jersey, that if this provision is left in the Constitution we will be supporting the Catholic Church which all of us do not subscribe to. Now, with due respect to the honorable members of your Committee, who feel this is not the support of the church—it has been considered as the support of a church. True, it is just nibbling at the edges of it, but it is the support of a religious denomination which all of us do not subscribe to. For that reason, gentle-

¹ The report appears in Mr. Titzck's remarks before that Committee, reproduced in Volume IV.

men, I submit to you that if this proposition is submitted in the Constitution as you have now submitted it, that the Protestant people of New Jersey will not sit idly by and take it. I predict, gentlemen, and I don't warn or threaten at all, but I predict that if this matter is left in the Constitution as is, it will very seriously jeopardize the passage of this Constitution. I can only express regret if that would take place, because I am very interested in the passage of this Constitution. I am a lawyer myself and I feel that we need a new Constitution, but to place such a controversial issue in the Constitution will, I believe, result in its defeat. I say that fearfully.

MR. EMERSON: Are you speaking for Presbyterians generally?

MR. DICKEY: Yes, sir.

MR. EMERSON: Well I am one and you are not talking for me.

MR. DICKEY: I speak for the New Jersey Senate of the Presbyterian Church.

MR. EMERSON: The Senate is a board of governors, isn't it? It is composed of a group of men.

MR. DICKEY: 385 ministers and the sessions of the churches throughout the State.

MR. EMERSON: Well, I happen to be on the session of a Presbyterian church and you are not reflecting my views. Have you polled the members of the Presbyterian churches in New Jersey to ascertain the views of the members of the churches?

MR. DICKEY: No.

MR. EMERSON: Has anybody?

MR. DICKEY: No, but the membership of the clergy of the Presbyterian Church, U. S. A., has been polled in New Jersey. The clergy of New Jersey has stated that it is unalterably in support of the proposition of separation of Church and State. We can't have this wall of separation torn down even in this small degree.

MR. EMERSON: Are you opposed to the present law which permits the transportation of school children, not necessarily parochial schools, private schools—any schools—on established routes, as provided by 1941 legislative act?

MR. DICKEY: If you refer to *chapter 191 of the Laws of 1941*, I am opposed to it.

MR. RAFFERTY: Mr. Dickey, you heard the question I asked Mr. Titzck. You have had an opportunity to reflect, and you say you are a lawyer. Let's approach this as a couple of lawyers. I want to say to you that I agree on the matter of separation of Church and State, tremendously so. I am not blind to history any more than you. More than that, I live under the Divine injunction that when a woman asked Christ to whom she should pay tribute, He asked to see a coin and He asked: "Who's image is this?" She said: "Caesar's." He said: "Render unto Caesar the things that are Caesar's and to

God the things that are God's." That to me is a matter of faith, and I am bound by that injunction. So that on the principle stated, you and I are not in disagreement.

But I am asking you as I asked Mr. Titzck: You speak a conclusion that to provide this transportation, *ipso facto*, if you don't mind the Latin reference, is to render support to a church. Will you be kind enough to tell me in your own views, as one lawyer and one citizen to another, in what particular way does the provision for the transportation of children to these schools—and we have talked about parochial schools—aid and support or tend to maintain a religious institution?

MR. DICKEY: Judge Rafferty, I have a great deal of respect for you because you were sworn in as a counsellor at the same time I was sworn in as an attorney. With all due respect to you, I realize that you were one of the judges who sat on the Court of Errors and Appeals and who voted on the case of *Everson v Ewing Township*, and yours is one of the votes that carried the decision in favor of the 1941 act.

I believe that the public school system in New Jersey is adequate to take care of any children who care to attend public schools. I cannot be convinced that by reason of setting up a parochial or a private or other type of school that we are relieving the taxpayers of something, because we are perfectly willing to have anyone attend the public schools who meets the qualification of age, and we are perfectly willing to educate our children. We are also perfectly willing to provide transportation for those children to the public schools. Now, when the parents of certain children in our State choose to send those children to parochial or private schools, that is the choice which they make of their own volition. They have the opportunity to send them to the public school, but instead they choose to send them to a private school. They send them there for a certain reason. The reason is they are taught a religious tenet. I think that is very definitely admitted by the Catholic Church. Now, to aid that church or that school, you are aiding the church if you are aiding the school. Therefore, by providing transportation for those children to a parochial or a private school you are aiding them in that school work. I think it is clear, Judge, although I do respect your decision in the case, I can't see how you can distinguish between transportation and any other support of the school. The support, and that is what it is, is transportation. It is part of the essentials of getting that child to school in providing transportation, and very definitely is part of the system.

MR. RAFFERTY: You will have to take this on fact, because I don't have the decision with me, but it is true that transportation

cannot be provided even to the public schools without an enabling statute. Do you know if that is true or not?

MR. DICKEY: That is my understanding.

MR. RAFFERTY: That is true. So that if it is necessary to have an enabling statute to transport school children to public schools may we not infer from that that transportation is therefore not a part of public education?

MR. DICKEY: I wouldn't say so, your Honor, because the reason for the enabling act, as I understand it, Judge Rafferty, is because the 1875 provision of our present Constitution provides that there shall be no special laws or private laws passed with reference to education. I can't get the exact phraseology of it, but I recall it in the present Constitution; and for that reason, it appears that a general enabling act must be passed by the Legislature to enable the local school boards to provide that transportation. I am in perfect agreement with you on that.

MR. RAFFERTY: I don't mean to prolong it. We are getting into argument, and you are not here to argue. I would like very much, however, Mr. Dickey, sometime to sit down and discuss this matter with you because I am truly interested. You discussed your views quite clearly, and you haven't minced words. It was the kind of discussion I like. Sometime, if we have an opportunity, I would like to sit down and talk with you about this thing because I am as earnest about it as you are, and I believe as you do in a separation of Church and State under the Christly injunction: "Render unto Caesar the things that are Caesar's and to God the things that are God's." We have a difference of opinion. Sometime I would like to discuss this with you.

MR. DICKEY: I would like that very much, your Honor.

MR. RAFFERTY: Mr. Harold Crane, General Secretary of the Essex County Council of Churches.

MR. HAROLD A. CRANE: Mr. Chairman, and ladies and gentlemen:

The Board of Directors of the Essex County Council of Churches, meeting in special session on July 3, 1947, in Newark, New Jersey, considered the important question of the support of our public schools in their historic function of providing citizenship training and a common American culture to all American youth, and approved the following resolution and proposal pertaining to the new State Constitution (*reading*):

"WHEREAS, we believe that the public schools of our State and nation are a fundamental part of our American way of life, and a vital necessity in the maintenance of good citizenship, and of true equality of opportunity, democratic attitudes, and mutual understanding, and

WHEREAS, the use of public taxes to support in any way other schools, sectarian or private, weakens and endangers the public schools, and fosters the growth of sectarian or private schools with resultant serious divisions

in American education and citizenship training;

THEREFORE, BE IT HEREBY RESOLVED, that the following be agreed upon as part of the proposed new State Constitution:

'Neither the Legislature nor any county, city, town, township, school district, or other public corporation shall ever make any appropriation or pay from any public fund or moneys whatever, anything in aid of church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or assist any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church, sectarian or religious denomination; nor shall grant nor donation of land, money, or personal property ever be made by the State or any such public corporation to any church or for any sectarian or religious purpose.' "

There is a footnote to that—that this is from the Constitution of the State of Illinois and is almost verbatim the same as the Constitution of the State of Missouri. Almost all states have a very similar type of provision in their constitutions. New Jersey is one of the few which do not have this kind of constitutional provision.

Now, gentlemen, let me say this at the outset: there is no thought on the part of the Essex County Council of Churches—this is a group of Protestant churches, laymen and clergymen combined—there is no thought on our part of considering this as a religious issue. We are thinking of this primarily and mainly as a matter of public schools. Personally, I have, before my work with this Council, been associated for many years in Bergen and Essex counties with the public schools in different capacities, from assistant football coach up to superintendent of schools. I know, I think, somewhat of the ideals and history and purpose of the American public schools. I know also the history of the Protestant Church, the history of the Federal Council of Churches, and its associated groups in New Jersey, the New Jersey Council of Churches and the Essex County Council of Churches.

We are thankful that we have, finally, a chance for a hearing. We regret extremely that this chance was not offered earlier and we regret that it was not offered in time for us to notify our folks so that we could have more here, if needed. We do appreciate the fact that you have many problems, but we agree with other speakers that this is one of the most fundamental problems, in our estimation, before the people of New Jersey, and before you, speaking or working for them. We feel that the public schools should not be weakened by support going to any other type of educational institution.

I do not include only Catholic parochial schools in that. I include just as firmly any Protestant parochial schools, and there are some. I include business schools, or private schools of different types, profit or non-profit. We are interested, and definitely so, because New Jersey is standing before the nation today as a weathervane because of the Supreme Court decision on this subject. Shall the full support of the public schools, under public taxes, be kept exactly

that way, or shall there be any beginning of inroads, small or large, upon the support of the public schools? We feel that the public schools are the democratic instrument of no religion, no group. They are the democratic instrument of the whole people of our State and our nation, and we want to preserve them that way, with no malice toward anyone of any faith or any group whatsoever.

So we say to you, there are two things that can be done. You have seen it wise in your estimation to place this in the Constitution. We feel that that does not give the citizens of the State the democratic chance, the full opportunity, to make their decision by referendum, which we would like to have. We would ask you, then, to do one of two things: either to remove this from the Constitution, remove it from your proposal to the Convention; or if you insist that it go into the Constitution, or be thought of for the Constitution, that the matter be a referendum issue, with the chance to vote "yes" or "no" presented to every citizen eligible to vote in the State.

I appreciate the opportunity to be here and shall be glad, to the best of my ability, to answer any questions, if you do not understand our position.

MR. RAFFERTY: Mr. Chairman, there are just a few points. You said you regretted not having an earlier opportunity. As Secretary of the Committee I'd like to say to you that invitations went out to no one. The public was cognizant of the fact that the Committee was operating, and many persons appeared before the Committee, all on their own initiative. We had communications from Mr. Titzck and from others in this matter. There were several communications—I think one, perhaps, from your group.

MR. CRANE: Yes, in which we requested permission to appear at the hearing if the Committee wanted to have us heard.

MR. RAFFERTY: Then the second point was, as I gather it, your opposition is not as stated by Mr. Titzck and Mr. Dickey, but rather you are opposed to private schools of any kind.

MR. CRANE: No, indeed. I didn't say anything similar to that at all, sir. I said that we did not believe that any school, sectarian or non-sectarian, private for profit or non-profit, or any school, outside of the public school, should have public support from public taxes. That is the entire thought.

MR. RAFFERTY: Well, perhaps you can help me in my question. Can you explain, and you probably can—you have a good knowledge of your subject—how the transportation of children is an aid to the school?

MR. CRANE: I heard you put that question to the other gentlemen. I appreciate that you are sincere in asking it. I will try to give you a sincere answer, if you will answer for me a similar question.

MR. RAFFERTY: I'll be glad to answer whatever I can.

MR. CRANE: It's simply this. The cost of running a public school under the school districts, the boards of education, has two sources of funds: it has local sources of funds and it has state funds. The state funds in New Jersey are not large in amount, but have been increasing and, I hope, will increase more. Now, these funds are used for various items: buildings, the maintenance thereof, facilities for instruction, materials for instruction, teachers for instruction. The item of transportation is legally O.K.'d by the state laws in the budget of any public school board, and it is in most of them, especially those of rural communities. It is a part of the cost of public school education. Now, for any non-public school, parochial or otherwise, private or sectarian, in figuring their costs, or in the family figuring its costs, to choose that special school, private or sectarian, the cost of transportation is definitely an item. It may be large, it may be small, but it is part of the picture and part of the cost—a part of the budget, either of the family or, in the case of the public school, of the board of education.

MR. RAFFERTY: Hence, it is an aid to the school?

MR. CRANE: Yes, it is an aid, in my estimation.

MR. RAFFERTY: Of course, you must be aware of the fact that I disagree with you on that. As I indicated to Mr. Dickey, the transportation, according to judicial decision, is not a part of the public school system, but must be by implementing or enabling legislation. Now, let's have your question.

MR. CRANE: My question is just as sincere as yours, and put in a very frank way. It is this: If, in your position, you feel that transportation is not an aid to a private or parochial school, why is your church asking for it?

MR. RAFFERTY: The church is not asking for it as such. It is the people who are asking for it, the Catholic people.

MR. CRANE: Their spokesmen are from the parochial schools.

MR. RAFFERTY: They are identified with the church, of course, just as I am identified with the church. I am a Catholic. When I make a public utterance, the public has a right to infer that my views are shaped pretty well by my religious training, just as yours are. But the parochial school system, as you are using the term, has been in existence, as you are aware, for many decades, and it has been regarded by many people just as I regard it—that it is not an aid to the schools. The parochial school system developed without any public aid whatsoever and it will continue to develop without any public aid. I may point out to you several cases, which you may refer to, to the contrary notwithstanding, that in my experience the administrators of the affairs of the Catholic Church want no public support, because with public support comes public supervision, comes public inspection, comes public control, and with those

things may very well come an embarrassment to the teaching of that which we hold not only to be most dear, but essential—the teaching of religion.

Therefore, answering your question directly, it is the viewpoint of the citizens, of those who happen to be churchmen, too, that we have a right to this transportation, inasmuch as there are strong views and, I think, supportable views that transportation is not a part of the education itself. In other words, let's put it in another way, transportation stops at the school door. The policeman who directs traffic is not contributing to the support of religion. The fireman, as was stated in the United States Supreme Court opinion, who puts out the fire in the parochial school, is not contributing to the support of religion. I mean, that is the logic of it. Don't you see?

MR. CRANE: I understand.

MR. RAFFERTY: I'm really interested in the matter because I think—Mr. Chairman, I know we're taking a lot of time, but I really think it is worth it—because as has been evidenced here, there is a cleavage of opinion which could only be discussed among reasonable people, and the answer really sought might save us a great deal of difficulty. I'm tremendously interested in having that particular, precise question discussed, although, of course, we can't do it here this afternoon. I hope I'm taking no advantage. I did want to get your views on it.

MR. CRANE: It's perfectly all right. May I say in regard to that, sir, that if you check the school laws of the State of New Jersey, you will find that in answer to education stopping at the exits or entrances of the school building, that is not the case, in this way. The school district has full authority over all pupils from the time they leave home until the time they return home, and that might include transportation. It does include their conduct in buses, and so on.

MR. RAFFERTY: Oh, I appreciate that! Thank you very much.

Mr. Charles O. Frye, representing the Plan Committee of the American Citizenship Foundation.

MR. CHARLES O. FRYE: Mr. Chairman, ladies and gentlemen of the Committee:

I am deeply interested in the things that are happening that we came down to discuss, and since the motives that were brought out were gone into quite thoroughly, I think it might be well to let you know about the group of people I'm working with, rather than what they have to say or what I have got down. I am working with a group of folks in Essex County, and we are hoping that we can quickly make it a committee of a hundred that will do a wonderfully fine job in understanding what you folks are doing down here and try to get it accepted by the public. We believe that there is

great sincerity on the part of this body. We have gone so far, some of us, as to go down and call the Governor's attention, before he got into action, that we felt the four major phases that should be presented to the public for their consideration were these: the responsibility and power of the people; the sovereignty of the people; what part can the Governor play in government; and how does your structure of the Constitution aid him in doing it? The second was the responsibility and power of the governor. We believe that that should be so thoroughly set up that—

MR. RAFFERTY: I don't mean to interrupt you, Mr. Frye, but time is running against us. That is the jurisdiction of the Executive Committee—the power of the Governor.

MR. FRYE: I'm speaking here now of what we are interested in. Then the responsibility on the part of the Legislature, and the Supreme Court. Now, this group wants to come out of this Convention with the kind of a document which we can get behind and focus our efforts behind. That is our major interest, but along came the question of taxation, and that is what I am here for today. The group wants to show you what we are interested in. That comes out.

Now, the controversial topic in the federal Constitutional Convention was handled this way. The Bill of Rights, when they could not agree on it, was set aside for amendments. Had they not done that, probably we would never have had the Constitution. Another thing, only 39 of the Constitutional Convention signed it. Madison, Hamilton and some more of them said this: "We must explain this." They produced the *Federalist Papers*. We are hoping that out of all this will come some such presentation to the public, so that we can get behind the Constitution and really do a first-class job. That is my major motive in coming down.

I might quote this one thing that Washington said, on this question of whether it should be this way or that way. He made this statement. He made this speech. It is only a 60-word speech, but I'd like to put it on the record. He said this (*reading*):

"It is, too, probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair. The event is in the hands of God."

That was spoken by George Washington just before they got into session. I believe that this group is really trying to do a good job. So that is my attitude in coming here.

Now, the thing I'm interested in is this: I approve a great deal of what has been said about setting up a plan for taxing that is not cemented down. I studied it quite carefully and I believe this will do that. Whatever you call it in your Constitution should be like this (*reading*):

"For all State, county, municipal, school and other public purposes, property will be assessed for taxation under the authority and direction of the proper subdivision of the State Department of Finance, in conformance to standards of classifications and procedures established by due legislative enactment."

What that does it this: that allows the Governor and the Legislature and the people to work out a perfect system of taxation, no matter whether it is one or another. Then, as I have told some of the folks, to say that you are just simply going to rely on a couple of catch phrases and hang the whole thing on that is no guarantee that the system is going to work properly. But if you allow such a clause as this to go into your Constitution, all these injustices and unfairnesses can be worked out, and there are many of them. In other words, one municipality or one town may assess on one level, and another on another. Essex County is where I am from. Now, I checked with the Bureau of Research here yesterday. There are a couple of statutory paragraphs providing that the various towns can make corrections, one against the other. There has been nothing of that kind happening. The power is not used there for the simple reason that the assessor in one town assesses it for what he considers that town's benefit, and another one another. Now, if we are going to have a fair assessment system, I believe that it must be administered by the State. Mr. Zink said here—I noticed this in the paper—it would take \$1,000,000, probably, to correct this mess. My thought is that if his department, or whoever handles that department, could set the thing up right in the first place, then there would be no need for correction. From what I know of the thing, I have made a study of it for many, many years, as long as we are going to rely on catch phrases, we are never going to make the corrections.

I was interested in what the *Newark News* said the other day about what Woodrow Wilson said. He said we needed to alter the tax system from top to bottom, and that the system we had was no better than no system. So instead of just trying to put the whole thing on catch phrases, let's have a perfect system and not cement it down until we are perfect. Then, if you want a constitutional provision, nailing the thing down, it ought to be this way. Let's do that after you have a working system. That is my thought.

CHAIRMAN: Thank you.

MR. RAFFERTY: Mrs. Irene Baldwin, from the New Jersey League of Women Voters.

MRS. IRENE BALDWIN: Mr. Chairman, Mr. Secretary, and members of the Committee:

I'll speak just very briefly on three points in your proposal, which we hope that you will reconsider. We do realize, however, Mr. Chairman, that you do have a very difficult problem.

The first point is one that has been mentioned a number of times before. We noticed that in Section I you continue the present tax clause. In our opinion the words "true value" cannot be defined consistently. It is evident that the tax clause which you have continued is unenforceable. We urge you to reconsider and clarify that clause by saying that property be assessed according to classification and standards of value established by law.

Now, our second point is on tax exemption. Further on in that same section you go into tax exemptions in detail. The New Jersey League of Women Voters believes that all tax exemptions should be left to law and not frozen in the Constitution. In view of the fluctuating financial picture as it is today, it seems to us wise to leave the Constitution as flexible as possible in this regard, and we urge you to leave tax exemption out.

Our third point is in regard to Section II, paragraph 1 (c), on transportation. We didn't speak on this before, but since you put it in, we would like to give you what our opinion is on it. The New Jersey League of Women Voters is opposed to the use of public money for other than public purposes. It seems to us that certainly in no case should a Constitution provide for public funds to be used for private purposes, and for that reason we recommend that the whole subject of bus transportation be omitted from the proposal.

CHAIRMAN: Any questions?

(Silence)

CHAIRMAN: Thank you, Mrs. Baldwin.

MR. RAFFERTY: Mr. Leo Pfeffer, speaking for the New Jersey Committee on Constitutional Bill of Rights.

MR. LEO PFIEFFER: I am here on one section in which we are interested. That is the first section dealing with exemption from taxation. Our committee, the Joint Committee on Constitutional Bill of Rights, represents a large section of the population of the State of New Jersey, including the State C.I.O., the State A. F. of L., N.A.A.C.P., the Urban League, the American Jewish Congress, the American Jewish Committee, the Jewish War Veterans, and a group of others, whose names have already been submitted to your Committee in our brief.

We are opposed to the proposed Section I in respect to exemption granted to religious educational institutions, in the form it is now proposed by your Committee. The principle that educational, charitable, religious corporations are entitled to tax exemption is one that is well founded on public policy which has existed in this country over 150 years. We believe it is a sound principle. We don't believe that the Constitutional Convention should tie up the Legislature's hands by freezing such exemptions, and by providing that such exemptions can never be altered or repealed, as is done

here. I'm aware that this sentence is not new. It is taken from Article 16 of the New York State Constitution. I'm also aware that that section was subject to a good deal of discussion and criticism there. Our interest in this section is special. We would not be opposed to even such an exemption-freezing provision if it were properly qualified to the effect that the recipient of the State's bounty in the form of tax exemption must abide by the laws of the State.

I don't know if all of you gentlemen know, but the laws of the State of New Jersey prohibit a non-sectarian educational institution from discriminating in the admission of students. The New Jersey Civil Rights Act expressly provides that any non-sectarian educational institution which is subject to the educational supervision of the State may not discriminate because of the reasons of race, creed, or color in the admission of students. Such educational institutions, under our Constitution and the provision which you are now submitting, are entitled to tax exemption. You are freezing their tax exemption. You are providing that, irrespective of the discriminatory policies which they undertake in violation of the law of the State of New Jersey—notwithstanding that they are violating the laws—you may not, nevertheless, take away their tax exemption.

I am not telling you something which is radical. I'm not making this up from my own mind. As I said, this section was taken from the New York Constitution, and in New York a case did arise, *Gophie v Mills*, in which it was sought to take away the exemption of an institution because it violated the laws against discrimination in the admission of students. The courts of the State of New York refused to take away the exemption because that exemption was frozen by the constitutional convention of the State of New York. You are, gentlemen and ladies, repeating that same mistake. I don't think that any one justifies anybody's pleas for the validity of racial or religious discrimination in non-sectarian educational institutions. We all agree it is an evil thing. We all agree it is a bad thing. We are all opposed to it. Whether or not additional laws should be enacted to eliminate the evil is not within the province of this Committee. I think, however, it is within the province of this Committee: (a) by all means not to guarantee perpetual exemption to such educational institutions which persist in violating the laws of the State of New Jersey; and (b) I'll go even further, our committee has proposed a substitute for Section I, which reads—I'll read it for the record, although it has been already submitted to you—it reads as follows (*reading*):

"Exemption from taxation may be granted by law, but no exemption shall be enjoyed by any charitable or educational institution other than religious sectarian institutions, which denies to any person the use or enjoyment of its facilities because of race, color, religion, or national origin."

We believe that this provision is predicated on the basically just

proposition that since all the people pay the taxes, and since tax exemption, in effect, constitutes a subsidy from public funds, the beneficiary of that subsidy has no right to discriminate among the various racial and religious groups which constitute part of the public that pays for that subsidy. For that reason, we urgently recommend to this Committee to reconsider that section dealing with tax exemption so as to qualify the exemption-freezing provision and to make it subject to the compliance of the beneficiary with the laws of the State; and secondly, expressly to provide the forfeiture of such exemption in the event that such institutions do violate the laws of the State.

MR. RAFFERTY: Mr. Pfeffer, you speak of this tax exemption as a subsidy. Is it strictly that?

MR. PFIEFFER: I think that is the theory. I believe the theory of tax exemption is this generally. Why are certain institutions tax exempt? The theory is that they are undertaking part of the burden of government. In other words, we have a charitable institution which is taking care of poor people. If that institution did not take care of them, the State would have to take care of them. Since that institution is taking care of them, the State is, in effect, subsidizing them, giving them—

MR. RAFFERTY: Is it a subsidy? Is it not considered as a compensation?

MR. PFIEFFER: Well, put it that way. It is quite possible.

MR. RAFFERTY: Well, is that right or wrong? Now don't say "put it that way." Is it a subsidy or is it a compensation?

MR. PFIEFFER: Well, the answer is—

MR. RAFFERTY: We like to be precise in our answers.

MR. PFIEFFER: Well, let me put it this way. Under the Constitution, the provision which you have here, the State cannot make a voluntary or uncompensated grant to anybody. But where you have subsidy by a State, we assume there is a *quid pro quo*, because the State has no power to make a gift of money. The Constitution so provides.

MR. RAFFERTY: The theory of *quid pro quo* and the theory of subsidy are absolutely opposed to each other, are they not?

MR. PFIEFFER: No, they aren't.

MR. RAFFERTY: A subsidy is a grant.

MR. PFIEFFER: Let me give you an illustration.

MR. RAFFERTY: I just want to get that clear. Now, this principle for which you speak—there was a bill in the last Legislature along the same lines, was there not?

MR. PFIEFFER: There was.

MR. RAFFERTY: It was not enacted.

MR. PFIEFFER: It was not enacted,

MR. RAFFERTY: A bill in the same tone was introduced in the New York Legislature, was it not—the Austin-Mahoney Bill?

MR. PFIEFFER: The Austin-Mahoney Bill in the New York Legislature has no provision as to tax exemption.

MR. RAFFERTY: But it was similar in import, wasn't it?

MR. PFIEFFER: The Austin-Mahoney Bill in the New York Legislature was similar to the New Jersey act against discrimination in employment. It was the same theory, but it wasn't against discrimination in education.

MR. RAFFERTY: In both states the Legislature did not enact the law.

MR. PFIEFFER: Except in this—New York does have a statutory provision that there shall be no tax exemption in the event a non-sectarian institution, educational institution, discriminates. That was the basis for that suit which I spoke to you about before, *Gophie v Mills*. The reason that that suit did not succeed was because of exactly a provision, the exemption-freezing provision you have here. That is the tremendous danger of such a provision.

MR. RAFFERTY: Well, now, one other question. You say that discrimination is practiced in this State in educational institutions

MR. PFIEFFER: No, I did not say that.

MR. RAFFERTY: You inferred that.

MR. PFIEFFER: No, I did not even infer it.

MR. RAFFERTY: I think you implied it.

MR. PFIEFFER: No, I'm sorry, I didn't imply it. I didn't mean to imply it.

MR. RAFFERTY: I was just wondering—

MR. PFIEFFER: Mr. Secretary, no, sir, I did not mean to imply any such thing. I think that constitutional provisions are written not solely for the situation existing just at this moment. You are arriving at a Constitution which may last as long as a hundred years, as the present Constitution did. We are making a Constitution not merely for our generation, but for our children and our grandchildren. Therefore, fortunately, we may say now that there is generally, we may say there is little proof of discrimination. Nevertheless, we are by no means certain that that fortunate condition will continue to exist. Since we are making this Constitution, not for one year, or two years, but possibly for a hundred years, I urge the provision which I have spoken about.

MR. RAFFERTY: You are fearful that even though to this day we have escaped the condemnation of the condition which you have indicated, and notwithstanding our educational system as we have it, both public and private, that we may descend to a mental status or a spiritual status where that would occur.

MR. PFIEFFER: There may be some which might. Discrimina-

tion in education is a comparatively recent thing. It was not practiced very much 50 years ago. It is very recent.

MR. RAFFERTY: In other words, when we had less education we had no discrimination. Now with greater education, there is more probability of discrimination.

MR. PFIEFFER: There is a good deal of truth in that. Unfortunately as it is, there is a good deal of truth in it.

MR. RAFFERTY: Well, that would lead me to some other observations.

MR. PFIEFFER: I don't think that conclusion is necessarily to be drawn.

MR. RAFFERTY: My logic teacher told me, when you make a point, don't go further.

CHAIRMAN: Thank you, Mr. Pfeffer.

MR. RAFFERTY: Mr. John Kingsley Powell, who was with us before. He has a whole armful of material.

MR. JOHN KINGSLEY POWELL: I will try to be brief. I appear here as a real estate expert, and I was before you previously, along with Mr. O'Brien, on this matter of taxation. You may remember you were good enough to invite me back the previous time when I came unprepared. I am prepared now with a volume of evidence here, Exhibits A to Z, but I won't submit it.

MR. RAFFERTY: I have asked Mr. Powell to distribute it. He has a lot of graphs and charts.

MR. POWELL: Well, briefly, I am going, as a so-called real estate expert, to tell you that the present system of assessment at true value has not worked, and, therefore, it needs a change. Now, as to the reason it has not worked, I have just completed a study here in Middlesex County for two clients, the City of New Brunswick and Highland Park, to determine the ratio between true value and assessed value. When I say that it does not work, it is common knowledge among those in the real estate business and others that our assessment methods are completely out of date, inaccurate, inadequate, and so forth. Of these 25 municipalities that I analyzed here in Middlesex County, the ratio of assessed value—that's this document in evidence that John speaks of—ranges from 15 per cent to 30 per cent. From my observation and knowledge of the other 565 municipalities, plus 21 counties in the State, that same thing exists. As the Governor indicates, and as John O'Brien indicates, and others, our present system has completely fallen down. Therefore I urge just in support, as a so-called real estate expert, that you enact the clauses as proposed.

Thank you very much. The evidence I will be glad to submit. I have maps, charts, diagrams, data galore, as we real estate experts do have. Thanks a lot.

MR. RAFFERTY: At least we know you are a real estate expert on your own admission.

(Laughter)

MR. POWELL: I am glad you made the point.

MRS. STREETER: We have been told many times that the present method of assessment is not equitable and that it varies greatly, but supposing we did, as we have been asked to do, permit the Legislature to classify real property? It would still have to be assessed under the classification, and how would we know that they would stick to the classification, any more than they would stick to the true value?

MR. POWELL: That is another long story we can't go into now. It can be done.

MRS. STREETER: It is late now. Do you think they would do it?

MR. POWELL: Yes, I think with competent legislation. I think that is a matter of legislation—that our present system is terrible. I could use much stronger language, but ladies are present.

MRS. STREETER: Why do you think you would get uniform assessments under classification, more than you do under true value?

MR. POWELL: By proper procedure, rules and regulations, by a new procedure entirely. I have completed for municipalities in other states a revision of procedure and have seen it work practically. Our present system in New Jersey is not working. It has fallen down completely in the real estate category. Here's 20 years' experience with assessed value right here in Middlesex County. There is no change—land and buildings. I've got that for every municipality here in the county.

MRS. STREETER: You think it would work better under classification?

MR. POWELL: Under proper rules. It needs a complete revision. There is no question.

MRS. STREETER: That is all. Thank you.

MR. EMERSON: Under the present Constitution, you could adopt rules which would make it possible to have uniform assessments.

MR. POWELL: All right, well and good if they did it. I doubt it.

MR. EMERSON: That is the point. Would they tend to do it more if we changed the language in the Constitution than they would do it at the present time?

MR. POWELL: I am of the opinion that they would, Mr. Emerson.

MR. EMERSON: You mean, just the fact that there is a change

would create a new situation, and you would have different types of men making assessments?

MR. POWELL: Yes, sir. I think that our present tax appeal board is an appeal body. Under Mr. Zink and in our Tax Department the rules and regulations and whole procedure, legislative and otherwise, is wholly inadequate.

MR. EMERSON: Yes, but you are still back to the same situation where you will have local assessors.

MR. DWYER: Well, here's a question that I would like to pack your mind with. I have taken this whole tax matter very seriously and came in here as a neophyte, and I have had such grave doubts as to the Conford philosophy and as to the Sly philosophy that I asked the men who gave us the brochures for an interpretation as to paragraph 12 [of Article IV, Section VII], and there doesn't seem to be a thing that we can't implement in the way of taxation from our present tax clause. I called Mr. Neeld up and I spoke to him for an hour on it, and I don't think it was with reluctance but with sincerity that he told me that we could implement any kind of tax from our present tax clause.

The question of disparity in local assessments and rating is a question of local municipal management. Now, then, Mr. Neeld referred me to a Mr. Kingsley, who also seems to have some incense burned under his nose as a tax expert—

MR. POWELL: That happens to be my middle name. I hope you are not referring to me.

MR. DWYER: I talked to him at length and I said to him that this procedure of taxing the inventories, if that may be the design, or of taxing the franchise, or of taxing the means of production, the machinery, the tangibles of industry—that which creates the wealth by which we become a leading industrial State—when you get down to the final definition of it, it means an income tax on a limited few taxpayers. Doesn't it?

MR. POWELL: I can't agree with you, sir. I think our trouble is with our definition of our present paragraph 12 as to property. There is no classification of property, sir.

MR. DWYER: Mr. Neeld said—and it is not for publication—it might be construed as an income tax.

MR. POWELL: I doubt that.

MR. DWYER: We can be horribly confused, I think. I made this statement from the outset, that the sooner this thing is resolved on the floor of the people's Convention and discussed right down to the very maximum of opinion on the part of all the delegates, the more we will get the public informed as to what they have to look forward to, because under the present taxing orgy that is going on in this country, we are liquidating New Jersey and we are liquidat-

ing the United States. I want to stem the tide if I can.

MR. POWELL: May I finish please, sir, and get out of the room? I just simply want to say: Here are 600 properties in one municipality, property by property on analysis. Our present methods in this one municipality are no different than the other 565 plus the 21 counties in the State. If it can be changed, Mr. Emerson, under our present law—

MR. FRANK J. MURRAY: You mean there is lack of uniformity in the assessments?

MR. POWELL: Yes—

MR. DWYER: That's the breakdown in the personal equation. That has nothing to do with the philosophy of taxation.

MR. POWELL: Well, I think if we are going to debate the philosophy of taxation, we will get far afield, sir. As long as we are committed to the present picture of benefits received as against ability to pay, then we must clarify our ability to pay. We talk about property as having ability to pay, but we don't break down our property, sir. We throw all property under one classification. Our courts have been kicking it around—excuse me, sir—have been having difficulty with it for years.

MR. DWYER: I understand that.

MR. RAFFERTY: I think it would be nicer to say our courts have been clarifying it.

MR. POWELL: That, sir, is a matter of opinion.

MR. DWYER: I have had these horrendous pictures of a man who lived in one town and who had a house of the same type and the same architecture, etc., paying an entirely different tax than the other fellow in the adjoining town.

MR. POWELL: Well, let me tell you: I was real estate conservator for the Department of Banking and Insurance for three years, liquidating about \$78,000,000 worth of building and loans, banks and insurance companies—that was during the bad days. We made a survey of them, county by county, because we had to take back this real estate for the benefit of the widows and orphans throughout the State. We felt it was a public trust. We talked to homeowners. Homes, as we know them in New Jersey, in one county would be five times what they would be in another county—the same property, same income, on the part of the property owner.

MR. MURRAY: To avoid that, you would have to have the State assessing all property, wouldn't you?

MR. POWELL: I will go a step further, and this is for the record: My firm conviction, whether under the present law or the revision, is that we need a state-level, policy-forming group, with the assessment done at county level, and eliminate all municipal assessors. Now, that is politically dangerous and full of all kinds of

troubles. I think we will see a lot in the Legislature as to that picture, but that is the only way you will get what we are after—equality.

MR. MURRAY: Well, that goes to the administration of the provision, not to the provision itself.

MR. POWELL: Yes. . . . Thank you very much. I didn't mean to get too long.

MR. RAFFERTY: Therefore, the provision is all right.

MR. POWELL: If the present provision can be legislatively interpreted and if it can be enforced at the state level—

MR. RAFFERTY: That, King, is a matter for the Legislature, is it not?

MR. POWELL: O.K. If the Legislature can do it under the present act, fine. Let's go battling in the Legislature.

MR. RAFFERTY: It is a legislative problem and not a constitutional problem.

MR. DWYER: Have you studied the general taxation philosophy? They have no tax clause at all in some states.

MR. POWELL: Sir, I am only a real estate man.

MR. DWYER: They make it the prerogative of the Legislature to take care of taxing. We have resolved it in a series of complicated words. We have got the language of paragraph 12, we have the Sly plan, and we have the Conford plan. Maybe it is better to live with the devil you know than go into the new field.

MR. POWELL: Well, I am of the opinion, sir, that the Sly plan will go far to correct the evil—if the evil is lack of equality, lack of, not ability to pay, but benefits received as to property.

MR. DWYER: Dr. Sly is the author of the franchise tax in the railroad case. With reference to diminishing returns, it went down from \$11,000,000 to \$1,260,000, so if he is an authoritative gentleman on taxes, I am a little bit dubious as to entering freely into any complete plan that he—

MR. POWELL: If I can make my point and then be dismissed, our present system is wholly inadequate. It needs a change.

MR. EMERSON: The system needs a change, but, on the other hand, you say our present tax clause is sufficient to enable—

MR. POWELL: No, I didn't say that. You said that, I think.

MR. EMERSON: I thought you asked that.

MR. POWELL: No.

MR. EMERSON: Well, what is there in the Sly plan which would remedy the inequalities which exist?

MR. POWELL: That says the property shall be classified. The trouble is now, under paragraph 12, it defines property in general, all in one basket. Property, we know, is not only real property and intangible personal property, but includes goods—all these things

that you mentioned. We lump them all in property under the old Constitution. That is my point. Property is not what needs definition. Our problem is that property is not properly classified. If we can do it by legislative enactment under the present Constitution, well and good.

MR. DWYER: Personally, I think 81 delegates should discuss that.

MR. POWELL: I will go further. I think, as the Governor said, every tax assessor and every county board has been committing perjury for years.

MR. DWYER: We are riding down the skids to a totalitarian form of government if we keep up this tax, tax, tax.

MRS. STREETER: I would like to ask Mr. Zink a question, as long as he is in the room. This is, in effect, the question I asked Mr. Powell. We have heard about the present mess under the true value clause. However, the law as set up provides for a review by county boards and by the state board. It doesn't work. Now, supposing we went into the proposition Dr. Sly and others have advocated and wrote in, instead of true value, that property should be assessed under classifications and standards, as fixed by law. Have you any reason to believe that it would be more accurately and fairly and uniformly assessed under those words than it is at the present time? In other words, we have boards of review now, and still the thing doesn't work. If we change the words, is it going to work any better?

MR. HOMER C. ZINK: I am obliged to admit that mere substitution of the so-called classification clause for the present true value clause would not in itself make any difference. It would not improve the matter of assessing property.

MRS. STREETER: What more should be done then, sir?

MR. ZINK: An appropriation today by the Legislature, of funds with which to carry out the laws which are now on the books with reference to equalization, would permit equalization under the provisions of the true value clause. That must be admitted. As Mr. Powell says, as a matter of pure political philosophy, you cannot expect to have any degree of equalization in assessment of taxes so long as there persists the present practice of having assessments made by assessors in 550 municipalities. Many of these assessors are part-time public servants. Many of them have had no training for the work which they are attempting to do, and it is an impossibility for those men, for many of those men, to assess property equitably today. As a matter of political philosophy, I agree with Mr. Powell that the proper way to control assessments is the way used in many states: supervision at the state level and actual assessments at the county level. That is done, I think, in California, and well done. It is done in other states.

Answering your question directly and repeating, I have got to admit that the mere substitution of the one clause for the other will not of itself alone produce any improvement.

MRS. STREETER: You feel it would be better because it would take out the straightjacket of true value?

MR. ZINK: I repeat, as I have already said, that in my opinion the substitution of the classification clause for the true value clause will make possible a far better method of assessing taxes than now exists. If the money were made available, or to put it another way, if the Legislature today were to appropriate as much money as might be needed to permit equalization of taxes throughout the State, the result would not be so good in my opinion as it would be if the same appropriation were made under a classification clause. There would be required, I admit, additional legislation which would require careful study, the idea of the whole thing being not merely to equalize taxes as between two parts of the State where they are not now equalized, but to produce a method of assessment, a method of levying taxes, if you please, which takes into consideration value on the one hand and ability to pay on the other. That goes to the question of what's to be done with personal property.

MRS. STREETER: One more thing. As I asked Mr. O'Brien—

MR. ZINK: Have I been perfectly clear?

MRS. STREETER: I think so, within the limits of my understanding. As I asked Mr. O'Brien, it has been suggested that we leave the present clause in except for cutting out true value—just say, "Property shall be assessed under general laws and by uniform rules," period. What is your opinion of that suggestion, as compared with the others that have been made?

MR. ZINK: My own notion is that the elimination of the words "according to true value" probably would help. But now if you will give me but two minutes, I would like to make an observation with respect to this whole question of true value.

Originally, the courts interpreted that clause to mean "according to true value," and that meant, perhaps, using a percentage of true value. Later, the courts changed their position and said that true value meant *at* true value, strictly at true value. Now, this is the observation I would like to make: Some 40-odd years ago, there was a man named Peter Finlay Dunn who wrote about a character named Mr. Dooley, and according to Mr. Dooley, the courts of the nation, the federal courts, followed the election returns. I am sure you will understand this, Judge Rafferty.

MR. RAFFERTY: You are speaking of the *federal* courts.

(*Laughter*)

MR. ZINK: I am speaking of the federal courts at the moment. And the courts did follow the election returns to such an extent that

ultimately they gave us what it was thought at first we never could have, a federal income tax. Whether that is good or bad, nobody is prepared now to say. But in this State, too, the courts have followed, not the election returns, but economic conditions, and I think the courts always in matters of taxation are almost inevitably bound to give consideration to economic needs. You will see in a minute what I am driving at.

In 1944, the Court of Errors and Appeals upset the 1941 railroad tax settlement act and did in 1944 what the Legislature itself would have done in 1944, although it didn't do it in 1941. The courts said that the railroads should pay the interest which the 1941 act attempted to forgive. The courts were right in saying that. They were right in saying that, because in 1944 the railroads were making a great deal of money. They were in income tax brackets which permitted them to get the maximum credit, so that when they paid in 1944 and 1945 some \$25,000,000 or \$30,000,000 of interest involved in the 1941 act, the Federal Government, in effect, paid 80 per cent of that because the railroads got that credit. That is a case of the courts giving consideration to economic conditions. Whether the courts were legally right or not, I don't say; in 1944, I repeat, the Legislature would never have forgiven that interest to the railroads because they were making money. In 1945, the courts upheld the 1941 new tax act passed by the Legislature embodying railroad taxes. In 1945 the railroads were paying under that act taxes which were in excess of the amount which they had paid under the old law, and the courts, I think, were quite proper in determining that the railroads should pay according to their ability to pay.

What I am driving at is this: In my opinion, if the time ever comes when the courts of this State think the people want an income tax—and, by the way, I have campaigned against income taxes for years, so this not a personal preference—but if the courts ever conclude that the people want an income tax and the Legislature passes a graduated income tax law, in my opinion, even under the present true value clause, the courts will be very apt to say that that law is constitutional.

MRS. STREETER: Thank you, Mr. Zink.

MR. MURRAY: Under the Sly clause, there would be the same impediment to a graduate income tax as there is under the present clause, isn't that true? You preserve the words "by uniform rules * * *."

MR. ZINK: That is right.

MR. MURRAY: Isn't that the part of the clause which makes some lawyers think that any income tax would have to be at a uniform rate?

MR. ZINK: That is right. In my opinion, the courts would be faced with the same problem.

MR. MURRAY: The courts enlarge what is believed to be the power of the Legislature so far as the graduated income tax is concerned?

MR. ZINK: That is my belief. I think the courts would be faced with the same problem in construing the classification clause as they would be in construing the true value clause with respect to an income tax.

MR. MURRAY: As I understand it, there is nothing in the present Constitution which would deprive the Legislature of the power to provide for assessment of all property by the State or by the county.

MR. ZINK: That is purely a matter of administration.

MR. DWYER: It was developed before us, Commissioner, that under the so-called Conford plan of the League of Municipalities, instead of collecting the taxes at a state level, each assessor along the main lines of these railroads for their first-class property would have complete discrimination in rendering a separate tax bill to the railroad, and, therefore, there would be a general revision of taxes all along the main line.

I think it might accomplish some confusion for the railroad treasurer, and the detail work and the bookkeeping would be enormously increased. I don't think there would be any advantage to it. It was one of the things that I took into consideration in the Conford plan.

MR. ZINK: May I say with respect to the Conford plan, if it has to do with the assessment of taxes on the main line of the railroads, the nature of the property owned by the railroads constituting the main stem is such that we in the Tax Department unanimously agree that it would be difficult, indeed impossible, to attempt to break that property down into the municipalities through which the railroads and systems run.

MR. DWYER: That is how I felt.

MR. ZINK: It is quite a different proposition from the second-class property which lies exclusively in individual municipalities and can be compared with property owned by individuals.

CHAIRMAN: Thank you very much.

MR. RAFFERTY: I understand it is your considered opinion that you recommend the Sly plan. Do you?

MR. ZINK: As opposed to the present true value clause, I prefer the classification clause, feeling that it would give greater freedom and elasticity to tax policies in the future.

CHAIRMAN: There is no other language that you have been able to conceive to be of greater benefit?

MR. ZINK: I am sorry to say there is none. At the moment you seem to have a choice only between the true value clause and the classification clause. May I say this with respect to railroad taxes?

Apparently you are not going to put anything into the Constitution about railroad taxes. Certainly, no tax theory should be written into the Constitution, but I think you are right in saying that the whole subject of railroad taxes must be thrashed out and it must be understood in order to form a basis for the adoption of a fair, honest and workable clause.

MR. LIGHTNER: That's all I am interested in. I am only interested in fairness of taxation.

MR. ZINK: I, too.

MR. LIGHTNER: Mr. Zink, I am sorry that I was called out of the room, but I would like to hear what you have already said. There seems to be a good deal of doubt in the minds of members as to the wisdom or desirability of introducing into the Constitution this word "classification," and I understand that you feel it would be desirable. But there is another suggestion put forward, and that is to take the present tax clause and simply omit from it the few words containing the words "true value."

MR. ZINK: Yes.

MR. LIGHTNER: And am I to understand that, in your opinion, this would be no improvement?

MR. ZINK: No. I say that it would be preferable to the clause as it now stands, in my opinion.

MR. LIGHTNER: It would be better to take out the words "true value."

MR. ZINK: I think that's true, sir. I would prefer to have them out if we are to retain the old laws.

MR. LIGHTNER: Do you feel that if those words "true value" were left out, that there would be any inhibition or prohibition against the Legislature classifying property for taxation?

MR. ZINK: No, I do not. You were out of the room when I spoke of what the late Peter Finley Dunn said about the courts. Following your return, I said the courts take into consideration economic conditions. Over a long period of time the courts, in construing the true value clause, have changed their point of view as conditions in the State changed. My own notion is that, as time goes on, if that clause stands, the courts will construe it according to what the courts think to be the wishes of the people at the time.

MR. LIGHTNER: That is, that they will construe "true value" to a point where it doesn't have much meaning?

MR. ZINK: That's right, sir. I even went to the point of saying that, in my opinion, if the time comes when the courts of the State think the people want and need an income tax, they could easily drive themselves into a position where they would uphold an income tax—a graduated income tax—under the present law. I think they might just as truly do that as under the co-called classification law.

There are many legal points to take into consideration.

MR. LIGHTNER: The thing I am driving at is this: As the record shows, I am one of those in the Committee who voted in favor of the clause containing the term "classification," and I am asking this question. In your judgment as a tax expert if we had the present clause with the words "true value" omitted, wouldn't the Legislature have as great a freedom to classify and fix standards of value as it would have if the words "classification and standards of value" were put in?

MR. ZINK: I think fundamentally that is true.

MR. LIGHTNER: So that if we dropped out the words "true value," we would have gotten the flexibility that you desire?

MR. ZINK: That's right, sir.

MR. LIGHTNER: And would have gotten it without inserting these words "classification and standards of value" which appear to raise doubts in the minds of so many members?

MR. ZINK: I feel that way.

CHAIRMAN: There is no doubt in your mind that under the present tax clause the Legislature has complete power to classify property for taxation?

MR. ZINK: I think the Legislature does have power to do that, and I have already said and say again that I think the courts would uphold that power.

CHAIRMAN: I think the Comptroller is correct from my reading. Originally, the framers of the tax clause had it that when they wrote the words "according to true value," they did not mean "at true value." They meant something that could be a percentage of true value within a class, but it has been interpreted differently, as the Comptroller says. In the beginning, the words "according to true value" were interpreted to mean what the framers of the constitutional provision intended it to mean, but now it is intended to mean "at true value."

I have had a suggestion made to me that we leave the words "according to true value" in the Constitution, but after the words "according to," add the words "but not more than," the effect of which, according to the proposer, would be that it may be "less than." That would be the meaning and the interpretation of that provision, which would really be almost analogous to the Sly provision except that you wouldn't be putting in anything about classification because I don't think you need to put in anything about classification.

MR. DWYER: I am very much in line with Mr. Zink's logic and I have had the privilege only of discussing it over the phone with Mr. Kingsley. I say they both give affirmation to the thought that

you could implement, from the present clause, any type of taxation you want.

CHAIRMAN: That's right, but you must keep true value.

MR. DWYER: That's a problem of administration.

CHAIRMAN: You can change the rate so that you wind up with a quarter of true value indirectly, by using, as Dr. Sly proposes, in the taxation of tangible property, half the prevailing rate as to certain types of personal property, based on true value. But that is a subterfuge or circumvention of the true value provision.

COMMITTEE MEMBER: If the true value were not there, one could pass legislation without having to work around the true value.

MR. ZINK: That's right.

CHAIRMAN: We are not suffering from the need for classification. The real point that is being made in this whole discussion, I think, is as to the words "true value" and not "classification."

MR. DWYER: Classification, Mr. Chairman, I think has a sort of negative psychological value. I think it has come to mean to us here a graduated income tax or such. That is, the facts of the matter are that this thing is interpreted erroneously, and that is one of the important things which we face. If a compromise is possible, my opinion is that it might be done by omitting the word "classified."

CHAIRMAN: I think the meaning of this clause is only a limitation on *ad valorem* property taxes. I don't think there is any restriction or limitation upon the Legislature to pass any other kind of taxes, such as franchise taxes or a gross receipts tax or any of the various other kinds of taxes that are really not *ad valorem* property taxes.

MR. DWYER: Well, the elasticity of the clause could result in giving us all devious types of taxation, and I think that is opening up the sluice gates. I am hoping that before I close my eyes there will be some administration in government that will think of retrenching instead of devising means of spending more money and having some smart boys tell them how they can do it.

MRS. STREETER: I move we adjourn.

CHAIRMAN: Before we adjourn, what is the disposition of the Committee in the matter of considering testimony this afternoon? Is it to have another meeting or shall we wait on the call of the Chairman for that?

MR. DWYER: I thought the Chairman had indicated that he wanted to discuss it with us.

CHAIRMAN: I don't mean a continuation of this hearing. This ends the hearing. I understand there are no more witnesses.

(The session adjourned at 5:30 P. M.)

COMMITTEE
ON
TAXATION
AND
FINANCE

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 FINANCE ARTICLE)

SUMMARY AND EXPLANATION

* * * *

ARTICLE VII

FINANCE

Summary:

1. All dedicated funds shall be abolished.
2. All appropriations for support of the State government shall be made in a single budget appropriation bill.
3. No supplementary appropriations may be made unless restricted to a single object or purpose and approved by a two-thirds vote of the membership of each house of the Legislature.
4. State borrowing shall be further limited to serial bonds which call for an annual reduction in the principal amount of the loan.
5. The State shall be free to repay its debts out of any revenue it may have available but whenever debt charges fall due the State Treasurer must set apart a sufficient sum from the first revenue he receives.

Explanation:

So long as the State's left hand is not permitted to know what its right hand is doing in a fiscal sense, the State's financial management is obviously under a severe handicap. The provision abolishing so-called dedicated funds will remedy this situation by preventing separate little treasuries for favored projects from being established, regardless of the demands of pressure groups.

The matter of dedicated funds is related primarily to the revenue side of State government, while appropriations, also regulated by a new provision, deal with public expenditures. In order to compel careful planning of this vital matter, the Legislature is required to gather together all appropriations in a single budget appropriation bill so that the real costs of all State government will be plainly apparent. There are, of course, emergencies and truly unforeseeable contingencies that may arise during the fiscal year. These may be dealt with through supplemental appropriations but only upon a two-thirds vote of each house upon a bill which directs its attention to an item for some single object or purpose. The latter provision will eliminate log-rolling to raise the necessary vote. Finally, the requirement

that funds must be available will give pause to supplementary appropriations made without thought of the source of payment. These provisions should lead to greater economy and efficiency.

The history of State government has proved the wisdom of rigid restrictions upon State borrowing. For this reason the requirement of a referendum upon all indebtedness exceeding \$100,000 is carefully retained. Serial bonds which call for amortization of the debt each year are made mandatory because they eliminate the need for State sinking funds. The former requirement that the law which authorizes the bonds must pledge the source of payment is deleted because it imposes an unfair rigidity to the State's fiscal policies for as much as thirty-five years. In order to protect the State's credit position, however, a substitute for the old provision requires the State Treasurer to pay the annual public debt charges out of the first moneys he receives.

TEXT OF PROPOSED REVISED CONSTITUTION

* * * *

ARTICLE VII FINANCE

1. The credit of the State shall not be directly or indirectly loaned in any case.
2. No political subdivision or special district shall 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.
3. Neither the State nor any municipal corporation shall make any donation of land or appropriation of money to or for the use of any society, association or corporation.
4. All revenues of the State government from whatever source derived, including revenues of all departments, agencies and offices, except the income of the fund for the support of free schools, shall be paid into a single fund, to be known as the General State Fund, subject to appropriation for any public purpose, except that separate funds may be maintained for revenues realized from any tax levied specifically for the purpose of maintaining free public schools, for the proceeds of bond issues, earnings of self-liquidating public improvements, revenues of restricted use under or in compliance with federal law, and revenues held in trust for retirement of the public debt, for the benefit of the State or local public officers or employees or for a specific public purpose required by private donation.

5. No money shall be drawn from the State treasury but for appropriations made by law.

All appropriations for the support of the State government, and for the several public purposes for which appropriations are made, shall be contained in one general appropriation bill enacted for each biennium and indicating the amounts appropriated for each fiscal period in the biennium. No other bill appropriating public money for any purpose shall be enacted unless it shall (1) provide for some single object or purpose, (2) receive the affirmative votes of two-thirds of the membership of each house of the Legislature, and (3) together with all prior appropriations for the same fiscal period, shall not exceed the total amount of revenue available therefor.

6. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

7. Except for purposes of war, or to repel invasion or to suppress insurrection, no debt or liability shall be contracted by or on behalf of the State in an amount which, singly or in the aggregate with any previous debts or liabilities, shall at any time exceed one hundred thousand dollars, unless authorized by a law which shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it.

8. Any such law shall provide for some single object or work, to be distinctly specified therein, and for the payment of the debt or liability thereby authorized in equal annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than thirty-five years after such debt or liability, or any portion thereof, shall have been contracted. In contracting any debt or liability, however, the privilege of paying all or any part thereof prior to maturity may be reserved to the State in such manner and upon such terms as may be provided by law.

9. All money to be raised by authority of any law authorizing the contracting of a debt or liability by or on behalf of the State shall be applied only to the specific object or work stated therein or to the payment of such debt or liability. Such law shall provide the ways and means, exclusive of loans, to pay and discharge the principal and interest of the debt or liability thereby authorized. If such law should be repealed prior to such payment and discharge, the Legislature shall make adequate provision for payment of the remaining annual installments of principal and interest, and upon failure thereof a sufficient sum shall be set apart by the State Treasurer from the first revenues received and shall be applied to such purpose.

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 FINANCE ARTICLE)

* * *

ARTICLE I

* * *

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.

* * *

ARTICLE VII

FINANCE

1. The credit of the State shall not be directly or indirectly loaned in any case.

2. All revenues of the State Government from whatever source derived, including revenues of all departments, agencies and offices, shall be paid into a single fund to be known as the General State Fund and shall be subject to appropriations for any public purpose; but this paragraph shall not apply to moneys which may be received or held in trust, or under grant or contract for restricted use, or which must be received or held in a particular manner in order to receive a grant, or which may be payable to any county, municipality, or school district, of the State. Nothing in this paragraph shall prevent or interfere with any payment of State revenues to, or any direct or indirect collection or retention of State revenues by, any county, municipality or school district which payment, collection, or retention may be provided by law. Nothing in this paragraph shall abridge the right of the State to enter into contracts.

3. No money shall be drawn from the State Treasury but for appropriations made by law. So far as known or can be reasonably foreseen, all needs for the support of the State Government and for all other State purposes shall be provided for in one general appropriation law covering one and the same fiscal year, except that, when change in fiscal year is made, necessary provision may be made to effect the transition. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the

appropriation contained therein together with all prior appropriations made for the same fiscal period shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the State Comptroller.

4. Property shall be assessed for taxes under general laws, and by uniform rules, according to standards of value as may be provided by law but not in excess of true value; but exemption from taxation may be granted by law to persons who have been, are, shall be or shall have been in active service in any branch of the military or naval forces of the United States in time of war.

5. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, or to meet an emergency caused by act of God or disaster, unless the same shall be authorized by a law for some single object or work to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the principal and interest of such debt or liability as it falls due. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election. Any such debt or liability thereby authorized shall be paid in annual installments, the first of which shall be payable not more than one year and the last of which shall be payable not more than thirty-five years, after such debt or liability shall have been contracted; but the privilege of paying all or any part thereof prior to maturity may be reserved to the State as may be provided in the law authorizing such debt or liability. All money to be raised by the authority of any such law shall be applied only to the specific object or work stated therein and to the payment of the debt or liability thereby created. No such law shall be repealable until such debt or liability, and the interest thereon, are fully paid and discharged.

REPORT OF THE PROCEEDINGS
BEFORE THE COMMITTEE ON TAXATION
AND FINANCE OF JUNE 24, 1947

(From the *Newark Evening News* of Wednesday, June 25, 1947)

FLEXIBLE TAX CLAUSE URGED
REVISION COMMITTEE ASKED TO LEAVE WAY OPEN
FOR NEW REVENUE SOURCES

Staff Correspondent.

NEW BRUNSWICK—Adoption of a brief, flexible tax clause that would leave the Legislature free to tap new sources of revenue to meet increasing costs of government was advocated yesterday by a procession of witnesses before the Taxation and Finance Committee of the State Constitutional Convention.

For the most part, the committee heard the opinions of Taxation and Finance Commissioner Zink and his departmental division chiefs. Spokesmen for the State Chamber of Commerce and the New Jersey Taxpayers' Association urged the abolition of dedicated funds, suggesting that all revenues go into the general state fund and that departments rely entirely on appropriations granted by the Legislature.

Alvin A. Burger, the chamber's director of research, declared, however, that his organization would be satisfied if the proposed new Constitution was silent on the question of dedicated funds. The main aim of the chamber, he said, is that the Constitution include no provision making dedicated funds a part of the state's basic law.

Cites 1944 Reforms

Burger declared that the 1944 reorganization of fiscal agencies into the Department of Taxation and Finance had cured many ills caused by dedicated funds.

Zink made a general statement at the opening of the hearing, declaring he favored a simple, elastic tax clause that would give the Legislature wide latitude on tax problems.

Frank E. Walsh, Zink's deputy, the director of taxation and acting state budget supervisor, estimated the state would be facing a revenue shortage of \$50,000,000 a year in the next few years unless it tapped new sources or reduced services.

Walsh said it was the opinion of experts that the clause in the present Constitution providing that "property shall be assessed for taxes under general laws and by uniform rules, according to its true value," should be retained unless something more flexible is offered.

He declared that there is no restriction on the imposition of an

income, sales or other type of tax under the present Constitution.

"I predict higher taxes, because you haven't got enough revenues to keep up the present form of government, with its many services," Walsh declared. "New Jersey is trying to keep up with the Joneses in providing services. It is trying to keep up with states that have income taxes and sales taxes, and it just can't be done with our present revenues."

Income Tax View

Delegate Milton C. Lightner of Bergen commented that there was opinion that an income tax was impossible under the present Constitution, and, while saying he was not advocating such a tax, declared that the Legislature should not be prohibited from imposing it.

Aaron K. Neeld, assistant supervisor of the Inheritance Tax Bureau and author of a monograph on tax problems prepared for the guidance of delegates, said that the principal complaint against the present tax clause is that it shifts too heavy a burden on real estate. That, he said, is not the fault of the Constitution. The Legislature is to blame for failing to provide classifications of property for taxing purposes, Neeld stated.

Consensus among tax experts, he said, is that a Constitution should be left "wide open" and that the Legislature should be given wide authority to levy taxes. "The experts think the Legislature will act reasonably," he declared.

Because the proposed 1944 Constitution, defeated by the voters, gave veterans a specific tax exemption, the opposition declared that other types of property such as churches might be subject to taxes since they were not specifically given exemption, Neeld said. "There is a doubt about it, and in a Constitution there should be no room for doubt," he testified.

Delegate Frank J. Murray of Essex raised the question whether the Constitution could be barren of a tax clause, leaving complete latitude to the Legislature. Neeld responded that there was nothing wrong with that method provided every one had confidence in the Legislature. He commented, however, that the original 1844 Constitution had no provision for taxes and that the Legislature granted exemptions to private corporations. Those exemptions led to the adoption of today's tax clause in 1875.

Asks Clarification

President Donald M. Waesche of the State Division of Tax Appeals declared there was nothing wrong with the present provision, but that it had been given a restricted meaning by the courts. He suggested that the clause be clarified, giving the Legislature specific authority to classify property and prescribe methods of assessing it.

Saying that in practice real estate is assessed at only 15 per cent

of true value in some cases, Waesche declared that constitutional authority should be given to that practice, but that uniform rules should apply. The remedy, he said, is for the Constitution to vest the Legislature with power to prescribe rules for the assessing of property at a percentage of true value.

Delegate John Milton of Hudson, saying the courts for 50 years had held "according to true value" to mean "at true value," declared that a change such as Waesche suggested would set off a chain of litigation that would upset the state's tax structure.

Waesche argued that the practice of assessing at a percentage of true value is a reality, and that inclusion of his suggestion would merely give legal recognition to the practice.

Milton responded:

"I shudder to conceive of the problems that would arise if a Legislature or administrative officers assessed at a percentage of true value."

"I meant the Legislature would do that," Waesche said.

"That may be worse," Milton said. "The answer is to enforce the law."

Rail Fight Recalled

Enactment of the railroad tax laws of 1941 and 1942, which in effect gave the railroads taxation at less than true value, was opposed by former Mayor Hague of Jersey City. Milton is Hague's close legal adviser. Hague led the fight against the proposed 1944 Constitution, which would have permitted the Legislature to set standards of value for tax purposes.

Abram M. Vermeulen, supervisor of the Accounting Bureau in the Department of Taxation and Finance, suggested that present provisions be retained banning the withdrawal of funds from the state treasury unless appropriated by the Legislature. He urged that the drafters of the Constitution include provisions putting all state agencies on a uniform fiscal year and in a single budget, a practice which was effected three years ago by legislation.

Burger joined with A. R. Everson of the New Jersey Taxpayers' Association in opposing tax exemptions of any kind, including those for veterans.

Hearing for Vet Groups

The committee scheduled a public hearing for July 10 at 10 A. M., in the main gymnasium at which representatives of veterans' organizations will present arguments of tax exemptions.

John F. O'Brien of South Orange, representing the Committee for Constitution Revision, urged the abolition of the true value clause of the Constitution and the granting of power to the Legislature to classify property and set standards of value.

LETTER OF
COLONIA POST 248, THE AMERICAN LEGION

COLONIA, NEW JERSEY

July 2, 1947

John J. Rafferty, Delegate,
New Jersey Constitutional Convention,
Rutgers University,
New Brunswick, New Jersey.

Dear Judge Rafferty:

All veterans of the State of New Jersey feel that they are entitled to have incorporated in the new New Jersey State Constitution, the following proposed Article:

"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."

At a regular meeting of Colonia Post No. 248, held on July 1, 1947, a motion was unanimously passed urging you respectfully, but earnestly, to actively support the above Article.

Very truly yours,

COLONIA POST No. 248

The American Legion

C. H. CASE, *Commander*

RESOLUTION OF
AMERICAN VETERANS OF WORLD WAR II,
DEPARTMENT OF NEW JERSEY

WHEREAS, the people of the State of New Jersey, at an election held June 3, 1947, overwhelmingly 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 the 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

Attest: *Commander, Department of New Jersey*

WALTER B. GOLDEN
Adjutant, Department of New Jersey

MEMORANDUM OF ASSOCIATED RAILROADS OF NEW JERSEY

August 19, 1947

To the Delegates to the Constitutional Convention of 1947:

The railroads of New Jersey have taken no active part in the proceedings of the Constitutional Convention. It has been our belief that we should not impose the problems of our industry upon a Convention which has earned the admiration of the entire State for its constructive and non-partisan approach to many perplexing problems of government. But tax proposals in the form of amendments to the Article on Taxation and Finance, now pending before the Convention, have the most serious implications respecting the continued safe operation and efficient service of the railroads of New Jersey.

Taxation is a complicated business at best. It is particularly complicated when applied to an industry, such as the railroads, whose rates are strictly limited by governmental agencies, both federal and state, and whose service responsibility extends to thousands of commuters and business enterprises which are dependent upon efficient railroad transportation. The railroads are currently confronted with urgent demands for additional services and new equipment costing many millions of dollars. Total railroad income available for these and all other purposes is limited by regulated rates. If excessively taxed, the railroads are left without funds sufficient to provide adequate service and equipment.

Any tax clause, however fair sounding, which is in effect an act of legislation by the Convention; which in effect repeals present tax laws; and which in effect "freezes" a vital part of the tax structure, must be viewed as permanently closing the door to the power of the Legislature to deal soundly with the many varying and constantly changing public interests involved in this question. The importance of this point of view, and our apprehension of the damaging consequences not only to the railroads, but to the State as a whole, of an unduly restrictive tax clause, compels us to offer the enclosed facts and figures, from official sources, for your information.

We hope that the Convention will avoid any act of legislation on this complicated problem; that it will consider the effect of restrictive tax provisions upon both the municipalities of the State and upon the transportation service vital to thousands of commuters and businesses; and that it will recognize that the railroads are already paying in the State of New Jersey far more than com-

petitive business, and far more than any other state in the Nation requires—by any measure of burden.

Respectfully submitted,

ASSOCIATED RAILROADS OF NEW JERSEY

1. THE EFFECT ON THE RAILROADS OF THE PROPOSAL THAT SECOND-CLASS RAILROAD PROPERTY BE TAXED AT THE LOCAL RATE

First, the amount of second class railroad taxes payable under this proposal, as compared with those payable under present law, will increase from \$5.6 million to \$12.7 million—a *net increase of \$7.1 million or 125 per cent.*

Second, this additional tax burden, due to the location of their respective second-class properties, will be distributed with the greatest inequality as among the various railroads and will affect their total taxes in the most varying degree, as shown by *Table 1.*

2. THE EFFECT ON THE MUNICIPALITIES OF THE PROPOSAL THAT SECOND-CLASS RAILROAD PROPERTY BE TAXED AT THE LOCAL RATE

First, Hudson County, with 10 *municipalities* containing second-class railroad property, would receive \$10.4 million of the total \$12.7 million levied against second-class railroad property—or 82 *per cent.*

Second, the remaining 444 *municipalities* which contain second-class railroad property would receive about \$2.3 million of the total \$12.7 million levied—or 18 *per cent*, as shown by *Table 2.*

Jersey City, which contains 60 per cent of all second-class railroad property, would receive \$8.7 million—or 69 per cent of the \$12.7 million levied against second-class property. It would receive \$5.3 million, or 76 per cent, of the increased taxes, and an over-all increase in its own revenue of 158 per cent.

The rest of Hudson County (exclusive of *Jersey City*) contains 18 per cent of all second-class railroad property and would receive \$1.7 million, or 13 per cent, of the \$12.7 million levied; and would receive \$0.7 million, or 10 per cent, of the increased taxes. It would receive an over-all increase of 65 per cent in its second-class railroad property tax revenues.

All other counties (including 444 *municipalities* with second-class railroad property) contain 22 per cent of all second-class railroad property and would receive \$2.3 million—or 18 per cent of the \$12.7 million levied. They would receive \$1 million, or 15 per cent, of the increased taxes, and an over-all increase in revenue for the 444 *municipalities* of 84 per cent.

3. THE RAILROADS ARE ALREADY PAYING IN NEW JERSEY FAR MORE THAN ANY OTHER STATE IN THE NATION REQUIRES—BY ANY MEASURE OF BURDEN

Comparisons of tax burdens upon railroads as among states are

TABLE 1
(See note below*)
(Amounts in thousands of dollars)

RAILROAD SYSTEM	Total of All Taxes (1947) (Add 000)	1947 Local (2nd Class) Property Tax		Per Cent Increase Under Proposal	
		Actually Assessed (Add 000)	Assuming 1947 Local Rates Were Applied* (Add 000)	Local (2nd Class) Property Tax	Total All Taxes
1. Central of New Jersey	\$ 2,696	\$1,166	\$ 2,795	140%	60%
2. Erie	1,494	692	1,527	121	56
3. Delaware, Lackawanna, and Western	2,248	934	2,142	129	54
4. Lehigh Valley	1,540	534	1,294	142	49
5. Pennsylvania	4,590	1,578	3,580	127	44
6. New York Central	784	453	781	72	42
7. Pennsylvania-Reading	408	76	161	112	21
8. Reading	479	77	153	99	16
9. New York, Susquehanna and Western	259	66	87	32	8
10. Unclassified	531	79	178	125	19
TOTAL ALL RAILROADS	\$15,029	\$5,655	\$12,698	125%	47%

Source: Computed from data obtained
N. J. Department of Taxation and Finance,
Railroad Tax Division, and *County Abstract of Ratables*

* It is necessary to assume the application of 1947 local rates, although the addition of second-class railroad property to local ratables would undoubtedly reduce these rates in most cases and cause some change in the calculation for each railroad. The principal reduction would occur in Jersey City where 60 per cent of all second-class property in the State is located. It is estimated that the Jersey City rate would change from \$7.729 per hundred to \$6.757, *provided municipal expenditures remained unchanged*. This would mean that the actual effect of the proposal in Jersey City would yield \$7.6 million after adjustment in the local rate, rather than \$8.7 million at the 1947 local tax rate. This difference of \$1.1 million indicates that the difference in the entire State would not exceed \$1.5 million. *Under these adjustments, the overall effect of the proposal would thus still cause an increase of 100 per cent in the second-class railroad tax.*

TABLE 2
(See note Table 1*)
(Amounts in thousands of dollars)

[illegible]

frequently expressed in terms of track miles or road miles. It has been implied that such comparisons do not reflect the high value terminal property in New Jersey. As shown in *Table 3*, comparisons based upon railroad property valuations determined by the United States Interstate Commerce Commission, substantiate previous findings that New Jersey imposes an excessive tax burden upon its railroads compared to what they pay in other states.

Based upon Interstate Commerce Commission valuations on Class I railroads, New Jersey imposed a capital levy of over 4 per cent. These same roads accounted for \$21,285,000 of New Jersey railroad taxes, or 98 per cent of the total. *This was almost double the rate in any comparable state.* 1944 was, of course, a high railroad tax year in New Jersey. However, by the same standard, railroad taxes for 1946 amounted to a capital levy of 3.11 per cent. The railroad taxes of 1947 amounted to a capital levy of 2.80 per cent, *which exceeds the rate in any comparable state in the prosperous year of 1944.* Even if 1945 taxes levied in New Jersey were used, the effective rate per \$100 would be \$3.82; but if 1945 New Jersey valuations were used, the effective rate would be \$4.72.

4. THE TAX PROBLEMS OF THE RAILROAD INDUSTRY, LIKE THOSE OF ANY OTHER INDUSTRY, SHOULD BE LEFT TO THE LEGISLATURE

Governor Alfred E. Driscoll, appearing before the Committee on Taxation and Finance on July 29, declared:

"In my judgment, a proper tax system distributes the burden fairly and impartially, calling upon each citizen, or corporation, or partnership, to pay his, or its, or their fair share of the cost of government. * * * Accordingly, I would strongly recommend that the language that this Committee may recommend covering the subject of taxation be first, brief; secondly, concise; thirdly, flexible; and that we leave to citizens elected by our people from time to time the precise problem of developing a tax program that will carry out our objective."

This purpose requires a balanced tax structure, built upon individual taxes best fitted to the economic characteristics of the various types of taxable property, activity and persons. Taxation of railroads under legislation designed to fit the railroad industry in New Jersey and to meet the needs of State and local governments has produced results such as these:

During the period 1941-1947, the effective rate of total railroad property and franchise taxes applied to taxable railroad property valuations averaged \$4.50 per hundred, as compared with an average of \$4.91 applied against all non-railroad property;

The effective rate against railroad property reached a peak of \$5.75 per hundred dollars of valuation in 1943, as compared with \$4.63 per hundred against all other taxable property in that year;

Railroad assessed valuations, everywhere at or above 100 % of true value, were increased from \$367 million in 1941 to \$441 million in 1947, while all other property, *much of it admittedly assessed at a*

TABLE 3
Effective Rates of Taxation Upon
Class I Railroads in Comparable Industrial States—1944
(Amounts in Thousands of Dollars)

STATE	Valuation— (Reproduction Cost Less Depreciation) ¹ (Add 000)	1944 Taxes ² (Add 000)	Effective Tax Rate per \$100
1. NEW JERSEY	\$ 522,077	\$21,285	\$4.08
2. New York	1,294,017	29,782	2.30
3. California	575,659	12,916	2.24
4. Rhode Island	34,929	758	2.17
5. Illinois	1,076,643	19,717	1.83
6. Virginia	421,497	7,465	1.77
7. Michigan	374,345	5,448	1.46
8. Ohio	921,279	12,433	1.34
9. District of Columbia	23,826	260	1.09
10. Massachusetts	299,036	3,849	1.29
11. Pennsylvania	1,643,699	15,799	.96
12. Missouri	431,049	3,448	.80

¹ U. S. Interstate Commerce Commission, Bureau of Valuation, valuations of land, rights and road as of January 1, 1946.

² U. S. Interstate Commerce Commission *Annual Report* (1944), tax accruals latest available year: N. J. State Department of Taxation and Finance, tax levied.

fraction of true value, actually was changed very little in aggregate assessed value over the same period.

The present railroad tax law, adopted in 1941, provided property tax relief as compared with the old law, but the new law was accompanied by a new income factor in the tax payable by all the railroads. As a result, the years 1941-1946 have yielded railroad tax payments in New Jersey in these amounts:

Current taxes	\$115.7 million
Back taxes and interest	\$ 60.3 million
<i>Total Taxes Paid, 1941-1946</i>	<i>\$176.0 million</i>

as compared with an aggregate of \$97.9 million actually collected by the State and its municipalities during the period 1935-1940.

The startling rapidity of the economic changes that have occurred over the past fifteen years, and are still occurring, underscore the truth of the statement that—

"Any tax clause, however fair sounding, which is in effect an act of legislation by the Convention; which in effect repeals present tax laws; and which in effect 'freezes' a vital part of the tax structure, must be viewed as permanently closing the door to the power of the Legislature to deal soundly with the many varying and constantly changing public interests involved in this question."

LETTER OF R. ROBINSON CHANCE, ESQ.

Jersey City, N. J.

August 15, 1947

To the Honorable Constitutional Convention (1947):

From the papers it seems that there is still enough in issue as to the Finance Article to justify comment. I make the following suggestions:

1. The decision of the United States Supreme Court, in the case of *Everson v Board of Education*, holds that the Legislature may make provision for transportation of school children, which one clause purports to authorize. This being so, I would not stir up the needless argument among the people, which this clause is likely to produce. I would cut out the clause.

2. The provision about exemption from taxes seems not to have aroused much public dissent but I think it would be better to leave it open for the Legislature to govern exemptions by legislation. The exemptions amount to aid to all churches and, if they were to be debated, would furnish more excitement than the smaller matter of transportation to and from school.

3. The provisions of Section I, paragraph 3, offer encouragement to those who think in terms of one fiscal year, one yearly budget covered by one general appropriation law, providing revenues to meet the appropriations and the reduction of the number of supplemental appropriation bills to a minimum, but it does not seem that the new provisions guarantee as much as a hasty reading might seem to indicate. The words "so far as known or can be reasonably foreseen" leaves enough room for the Legislature to make a supplemental appropriation by saying that the object was not known or could not reasonably have been foreseen. The provision about one fiscal year "covering one and the same fiscal year, except that when change in fiscal year is made, necessary provision may be made to effect the transition," presents the implication that the Legislature can change the fiscal year at any time. The provision requiring anticipated revenue to meet appropriations seems to be desirable, but why is the provision "as certified by the State Auditor?" This seems to make the State Auditor a constitutional officer. Why is the Auditor any better to certify than the State Treasurer or someone else?

4. The provision in Section I, paragraph 4, "or to meet an emergency by act of God or disaster," allowing incurring indebtedness in excess of \$100,000 without referendum, seems appropriate.

5. All other provisions are taken word for word from the present Constitution.

The committee has lifted the true value clause from the present Constitution. I think this was wise. If property is to be assessed for taxes I know no reason why it should not be assessed under general laws and by uniform rules and I do not know of any reason why true value should not be the criterion. Certainly one would not have the Constitution say property should be taxed at fictitious and arbitrary values. Some are reported to desire to scrap the true value clause and put in some general provision enabling the Legislature to establish standards and classifications of property for taxation. There are plenty of cases in which the courts have decided that the present constitutional provision does not take away from the Legislature the power of selecting the subjects of legislation. It may now classify property for taxation by its characteristics or the uses to which it is put. The only restrictions are that the tax be uniform as to the whole of the class and at true value of the property constituting the class. It cannot be based upon mere ownership. The provision which it is reported that the League of Municipalities and the Hudson delegates have advocated, to the general effect that all non-exempt property shall bear an equal burden, might do away with the existing right to make classifications of property for taxes or it might be deemed that there was an equal burden if all in a class were treated alike.

I have wondered if it would not be possible to leave the true value clause as it appears in the draft and add a clause to the general effect that no excise, or other fee, charge or tax in lieu of property tax, could be levied or authorized by any law which did not also make provision whereby the municipality should be reimbursed for the loss which it would otherwise sustain by the withdrawal of property tax which the excise was made "in lieu of." Whether this is practical or not, there should be some specific regulation of excises.

As far back as 1628 the failure to include "excises" as well as "taxes" in the Petition of Right left it still open to debate if the King had power to levy poundage without grant from Parliament. There are enough taxes held not subject to the property tax clause on the ground that they are fees or excises, to justify some regulation of excises in the Constitution.

Dedicated funds have not been disturbed by the tentative draft. Those which are dedicated to the schools, counties and municipalities have good historical reasons for continuance. Whether the other dedicated funds should exist or not seems to be more a matter for legislation than Constitution.

If an income tax on personal income is objected to it might be well to add a clause

"No personal income tax shall be authorized or levied by or under any law."

Respectfully submitted,

R. ROBINSON CHANCE

P. S.—These are my own individual views.

Absence from State when tentative draft of the Finance Article was released prevented submission to the Committee before its report.

See also page 436 of book entitled: "Proceedings before New Jersey Joint Legislative Committee under Senate Concurrent Resolution No. 19, Adopted June 15, 1942 to Ascertain Sentiment of the People as to Changes in the New Jersey Constitution."

RESOLUTION OF THE CITY COUNCIL OF ELIZABETH, N. J.

(By Councilman Nittoli)

WHEREAS, the Committee on Taxation of the New Jersey Constitutional Convention is considering the subject of taxation on property within the State for the purpose of incorporating a clause in the new Constitution; and

WHEREAS, the present Constitution provides,

"Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value";

and

WHEREAS, the present clause in the Constitution has proven wholly inadequate for the fair taxation of property within the State; now, therefore, be it

RESOLVED, that the tax clause in the Constitution be broadened to read as follows:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. The burden of direct taxation upon all real property not exempted shall be equal."

And

BE IT FURTHER RESOLVED, that the City Clerk be and he is hereby directed to forward copies of this resolution to Governor Driscoll, to the Chairman of the Constitutional Convention and to the Chairman of the Committee on Taxation of the Constitutional Convention.

Adopted July 7, 1947

LETTER OF GEORGE J. HART, Esq.

GEORGE J. HART
352 Van Buren Ave.
Teaneck, N. J.

July 10, 1947

Chairman
Rights and Privileges Committee
Constitutional Convention
New Brunswick, N. J.

Dear Sir:

Parochial school children have a right to ride in public school buses, simply because their parents have paid for the maintenance of the buses by their taxes. It does not fall because some people do not choose to use all of the public school facilities they should be barred from some of the other benefits they pay for. Catholic communities of this state pay many millions of dollars a year by having a double school burden. Is that a crime? Forty percent of the men of the army and navy in the last war were Catholic yet we comprise but twenty per cent of the population.

This idea may seem strange to men like Weidner Titzck, but the parochial school in the American school hallowed by American tradition, the first schools and all the schools of the country up to a hundred years ago were church schools run by the different Christian denominations. George Washington and all the founders of our nation were educated in church schools.

Nowhere else in the Protestant world of to-day has this issue been raised, in countries where the population is non-Catholic in the majority such as, Great Britain, Netherlands, Germany, Australia and Ontario, tax monies are shared with the Catholic schools.

If this law is passed, Catholics will feel they have been unjustly treated in being deprived of a service necessary to the life and health of their children and which they have actually paid for in their own honest-to-goodness hard earned cash.

I beg of you Mr. Chairman to consider the very wise and calm decision of our own Supreme Court in Washington, that it does not follow because a child is Catholic he should be barred from his right to ride in a public bus.

Many Protestant clergymen today are asking themselves whether it will be necessary for Protestants themselves to found their own schools soon, or else see their youth drift away from the Christian religion forever.

Yours respectfully,

GEORGE HART

RESOLUTION OF JEWISH WAR VETERANS OF
THE UNITED STATES, NEW JERSEY
STATE DEPARTMENT

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.

RECOMMENDATIONS OF THE LEAGUE OF WOMEN VOTERS OF NEW JERSEY

*(Excerpted from the League's brochure, "Constitutional Changes,"
submitted to the Constitutional Convention in June, 1947)*

* * * *

FINANCE

1. *All revenues of the State Government from whatever source derived shall be paid into a single fund, and shall be subject to appropriation for any public purpose.*

EXPLANATION—The 1944 draft made provision for a General State Fund in Article VII, paragraph 2. Such a general fund is now required under a law enacted in 1943. It is recommended that the provision be made constitutional, as an essential part of sound state finance.

2. *All branches of the State Government shall operate under one and the same fiscal year.*

EXPLANATION—All branches of the State Government now operate under a uniform fiscal year as provided by law in 1943. It is recommended that this provision be made constitutional as essential to sound state fiscal policy. The 1944 draft included such a provision in Article VII, paragraph 3.

3. *The budget shall be submitted annually by the Governor and shall be accompanied by an appropriation bill which must be acted upon before any other appropriation bill is passed.*

EXPLANATION—This proposal is recommended to make certain that the means for supporting the budget are available. It is an accepted feature of many state constitutions, including the new constitution of Missouri.

4. *Property shall be assessed according to classifications and standards of value to be established by law.*

EXPLANATION—This proposal is recommended as an improvement over the present constitutional requirement that "Property shall be assessed for taxes under general laws and by uniform rules according to its true value," a method which has long been recognized as unenforceable and inequitable. The term "true value" has been attacked as too inflexible because it sets up an *ad valorem* system that is a tax on the capital value of property at unlimited rates, a bad yardstick for measuring the tax-paying capacity of property. Forty-three states now have provisions for the classification of property for tax purposes. The New Jersey Constitution should make it possible to set up by law different standards for residential property, income producing realty and intangible personal property.

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF NEW JERSEY¹

The New Jersey League of Women Voters is an organization composed of 44 local units in this State. It is devoted to study and action in the field of government exclusively and approaches governmental problems from the point of view of the citizen who believes that he has a very necessary part to play in a democracy.

The opinions which I express this morning were voted upon by the State Council which includes representatives from each local unit in the State. Our complete recommended changes have been presented in booklet form with a copy to each delegate to the Convention. This morning I should like to speak briefly on the parts which concern your Committee.

We recognize that the Constitution should include only basic law and refrain from including matter better left to statute. There are however two features now provided for by statute only which we believe should be given constitutional status. The first of these is that all state monies be in a single treasury, the second that the fiscal year be the same for all departments of the State Government. We believe that these two features are essential for sound fiscal policy and should be included in the Constitution.

For many years the League has advocated the establishment of an effective State Department of Finance under the Executive as recommended by most authorities on the administration of government. We believe that the Constitution should provide for an Auditor elected by the Legislature to act as their agent. On the other hand, we believe that mention of the offices of Comptroller and Treasurer do not properly belong in the Constitution but these functions should be provided for by law.

A feature of many state constitutions and one which we think important is a requirement that the budget shall be submitted annually, by the Governor, and accompanied by an appropriation bill which must be acted upon before any other appropriation bill is passed. Provision can be made for emergency appropriations upon recommendation of the Governor.

When it comes to the question of the tax clause we realize that you have a very difficult problem. You not only have to consider what is the correct basis for taxation but also the effect that a change in that basis would have on the State's tax structure. You also must take into account the interpretations of the present tax clause which have been made by the courts.

One of the major points in the program adopted at the State

¹ Statement by Mrs. K. A. Baldwin before the Committee on Taxation and Finance, July 15, 1947.

Convention of the League of Women Voters in May 1947 is, "More equitable distribution of the tax burden." It has been estimated that real estate which consists of approximately 30 % of the taxable property of New Jersey is bearing about 80 % of the tax burden. We know that assessments vary greatly from county to county and municipality to municipality, causing injustice to many taxpayers. While a great deal of this injustice could and should be corrected by the Legislature, we believe that a tax clause should be written into the Constitution which will leave no doubt that the Legislature is permitted to set up standards for different classes of property and provide for their taxation accordingly. For this reason we urge you to include in the Constitution provision for property to be assessed according to classifications and standards of value to be established by law.

To summarize, our recommendations are:

1. All state monies in a single treasury.
2. All branches of State Government under the same fiscal year.
3. The budget submitted annually by the Governor and accompanied by an appropriation bill.
4. Provision for property to be assessed according to classifications and standards of value to be established by law.

MEMORANDUM OF
AARON K. NEELD, DEPUTY DIRECTOR
DIVISION OF TAXATION, DEPARTMENT OF
TAXATION AND FINANCE¹

CLASSIFICATION CLAUSE

While the courts of this State, from the beginning, have adopted a liberal interpretation of the 1875 tax clause by upholding, with few exceptions, the power of the Legislature to classify property for purposes of taxation and exemption, nevertheless it seems advisable to specifically provide for classification. This conclusion is prompted by the possibility that the present clause, notwithstanding general judicial support for the power to classify, may be found wanting in the event of an endeavor to solve the tangible and intangible property tax tangles and other tax difficulties. Both the Commission on Taxation of Intangible Personal Property (1945) and the Commission on State Tax Policy (1946) held the view that a thorough classification statute might be held invalid. A classification clause would also bring the Tax Article more nearly in conformity with such articles in other modern state constitutions.

This, of course, will not, as some of its proponents suggest, automatically shift the heavy burden of taxation from real property. That is something which cannot be attained merely by constitutional edict. But insertion of a classification clause will provide the Legislature with needed tools to deal fully with the problem of more equitably distributing the tax burden. It will permit a broadening of the tax base over which to more evenly distribute the tax load. Although a judicially and time tested constitutional provision should be abandoned reluctantly, I, nevertheless, believe that the people of the State cannot be harmed by so doing, but to the contrary will be better served over the years to come by such a change.

EQUAL BURDEN CLAUSE

The suggestion that the present tax clause be augmented by a provision that "The burden of direct taxation upon all real property not exempted shall be equal," is, it is believed, a step in the wrong direction. I reach this conclusion reluctantly and only after thorough consideration of the proposal, because I readily agree that there should be equality in taxation as far as reasonably possible, but it does not always follow that a tax is most equitable when spread alike on all property. If that were true, the universal demand for classification would not prevail.

¹ Memorandum to Director Homer C. Zink, dated July 16, 1947.

In the first place, such a provision, contrary to the generally accepted concept of a model tax provision, places a stringent restriction on the Legislature in the handling of the broad tax problem. The underlying theory of the merits of a classification clause is that equality of taxation quite often cannot be attained unless property can be segregated according to its characteristics, or the use to which it is put. As the courts have fully recognized, utility property is of that nature and may most equitably, all things considered, be taxed separately from property in private use. After years of study and controversy the Legislature concluded that rail property also required separate treatment to achieve the best long-term results. With the economy of the nation changing so rapidly it seems most injudicious at this time to fetter the Legislature with provisions that may preclude it from most effectively dealing with issues arising out of those changes.

In the second place, there is the element of ability to pay. I fully realize that it can be urged that railroad interests are not better than private interests to be forced into financial straits by heavy taxes, but the circumstances of utility and private interests are not identical, and, therefore, are not susceptible to the same treatment. I am deeply concerned with the collection as with the assessment of taxes. Everyone still has in mind the large accumulation of railroad taxes which remained uncollected over a long period, with the attendant treats of insolvency and bankruptcy proceedings and ultimate default. Government cannot be run on assessments. Ability to pay is as vital as the assessment.

It must be remembered that utilities are affected with a public interest. Their operations are rigidly controlled in every direction, including revenue, the very life blood of every utility. They are not free, as are private interests, to make their own adjustments for changing costs of operation. Taxation of second-class railroad property at local rates and main stem property at the average state rate would produce a property tax liability in excess of \$26,000,000 annually, which I believe the roads would be unable to pay year in and year out, ultimately leading to insolvency with an attendant loss of revenue to the State and municipalities.

I might also observe that doubt exists in my mind of the right of the State, under this proposed clause, to assess main stem as a whole unit at the average state rate of taxation. The equal burden clause requires that every piece of property within the taxing district shall bear an equal burden of taxation. A piece of railroad property could not, therefore, be assessed at an average state rate of say \$5.50 per hundred, while an adjoining piece of privately owned property in the same district is assessed at \$7.50 per hundred. If it be urged that main stem property is in the state jurisdiction

and not within the several local taxing districts through which it runs, and, therefore, that the average state rate is equal throughout the state jurisdiction, so as to fulfill the constitutional requirement, then what is to prevent the Legislature from saying, as it does now, that second-class property is also within the state jurisdiction and for that reason is to be taxed at the average state rate. Although the proposed equal burden clause may be open to judicial interpretation on that score, it seems that the evident intent of the clause is to make each parcel of property within the taxing district bear the same share of tax, having due regard, of course, for differences in valuation. If that is its purpose, then the practice of assessing and taxing main stem property as a unit must be abandoned, thereby adding greatly to the difficulties in administering the already complicated railroad tax, and, incidentally, probably resulting in a lowering of the value of this type of property since appraisal in parts may not produce as high a value as appraisal by the unit or system.

I respectfully submit, therefore, that the Legislature should not be restricted in working out its tax problems by this type of constitutional limitation.

PROPOSAL OF NEW JERSEY ASSOCIATION OF COUNTY TAX BOARD COMMISSIONERS AND SECRETARIES

Committee on Taxation,
Constitutional Convention of New Jersey,
New Brunswick, New Jersey.

Gentlemen:

The board of trustees and a special committee of the New Jersey Association of County Tax Board Commissioners and Secretaries have recently concluded a careful study and have submitted a report in connection with the form and content of the tax clause for the proposed Constitution which is now under consideration by your Committee. As president, I have been authorized and directed, on behalf of the Association, to present to your Committee the views of our organization, as reflected by the majority opinion of our board of trustees and the special committee who have devoted themselves to this particular question.

In approaching the problem of framing an appropriate, equitable and workable tax provision for the new Constitution, we were impressed by the necessity for certain basic guarantees which we felt would be indispensable. First, we concluded that it is essential that taxation of property be legislated only by general laws; second, the administration of our tax laws should be had under uniform rules; and third, it is our considered opinion that the tax clause in our basic charter should prescribe some standard of value for the guidance of and limitation upon the Legislature.

In seeking out an acceptable standard of value for inclusion in the tax clause, we were particularly impressed with the "true value" provision as contained in the present Constitution by force of the 1875 amendment. A new constitutional standard of value for purposes of taxation, however phrased, will necessarily require numerous judicial constructions, over a period of many years, before its meaning can be adequately defined. We prefer the standard of "true value" principally because of the numerous illuminating opinions which have already been handed down by our highest courts in that connection. Today in New Jersey the meaning of "true value" is reasonably fixed and certain. We should therefore take advantage of the results obtained through the painstaking and tedious litigation of previous years, by retaining "true value" as our standard of value for taxation purposes, and thereby make it

unnecessary to embark at the beginning of a wearisome journey through a maze of litigation in search of judicial interpretations of whatever new standard might otherwise be fixed.

We also gave considerable thought to the possible inclusion in the tax clause of a provision specifically granting legislative authority to classify property for assessing purposes. Although we looked favorably upon certain features of the tax provisions as contained in the Delaware and Pennsylvania constitutions, whereby specific authority is granted to the legislature for assessment classification, we concluded nevertheless that it would be in the exercise of better judgment to refrain from such an express grant to the Legislature. Our decision in this regard was motivated principally by the great number of decisions in this State, the over-all effect of which has been to place the stamp of judicial approval upon reasonable classification of property for assessing purposes. As a result, we felt that our judicial interpretations are an authority for all reasonable property classifications, and that a specific legislative authority in the new Constitution might readily extend the classifying power beyond such reasonable limits.

In addition to the foregoing, we debated at length the question of assessment exemptions. Respecting this important and difficult subject, we concluded that the tax clause should contain a provision granting to the Legislature the power to exempt such property as in its opinion will best promote the public welfare. However, we are mindful that the grant of an exemption from taxation constitutes a surrender of the sovereign power of the State to tax. Such power should not be surrendered unless the expression of our Legislature in that regard is clear and unmistakable. It is our suggestion, therefore, that while the power to grant exemptions in the public good be vested in the Legislature, such power be not effectual unless evidenced by at least a two-thirds vote of all of the members of both houses of the Legislature.

By application of the foregoing analysis and conclusions, we have decided that the 1875 tax clause, as contained in our present Constitution, be continued in force without change, and that supplemental thereto, an appropriate provision be drafted incorporating our conclusions respecting the grant of exemptions.

In keeping with our views herein expressed, we respectfully submit for the consideration of your Committee the following proposed tax clause for the new Constitution on behalf of the New Jersey Association of County Tax Board Commissioners and Secretaries:

"Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value, but the Legislature by an affirmative vote of two-thirds of the members elected to each of its two houses may, by general laws, exempt from taxation such property as in the opinion of the Legislature will best promote the public welfare."

Respectfully submitted,

NEW JERSEY ASSOCIATION OF COUNTY TAX

BOARD COMMISSIONERS AND SECRETARIES

HERBERT H. EBER, *President*

STATEMENT OF NEW JERSEY ASSOCIATION OF REAL ESTATE BOARDS ¹

Gentlemen:

My appearance here today is on behalf of the New Jersey Association of Real Estate Boards representing more than 1,500 New Jersey realtors from every county of the State. I think you should know that for every member there are an average of four to five employees—eight to ten painters, carpenters or other contractors, and an estimated 50 to 100 home owners who rely entirely upon them. Their work as real estate brokers, managing agents, mortgage representatives, real property appraisers and developers brings them into intimate daily contact with the real property taxpayers of this State. They are a constructive force. By the nature of their business they are community builders and developers. They sell land, develop, build, finance, sell and rent homes. They bring industry and business to the State. You will find them in almost every charitable, civic, planning and community building movement. Their business is an old and honored one. Their practical experience in the field of real property taxation is great and of long standing. Their opinion in this matter—given without the sole intent of self interest and without political background—should be of some value to you gentlemen in your difficult considerations. They have not appeared before you prior to this because one of the best informed tax experts in New Jersey is one of their members. Representing the realtors, John O'Brien presented their collective opinion in 1942. They have been striving for years to clear up our muddled tax situation and get some relief for the small home owner. They affiliated themselves with the Constitutional Revision Committee in the matter of this tax clause. They recommend to this Committee three principal things:

1. The removal of the true value phrase;
2. The inclusion of a provision for classifications and standards of value to be established by law, and
3. Beyond the retention of the time-honored exemptions for religious and charitable organizations—that tax exemptions be made as difficult as possible.

The necessity for the preservation of private property as an institution, full and complete lists of ratables in order to protect equality of distribution, speak for themselves and need no further discussion here. If the Legislature in its wisdom decrees a tax exemption,

¹ Presented to the Committee on Taxation and Finance on August 5, 1947, by Ormonde A. Kieb, immediate past president and chairman of the Trenton Committee of the New Jersey Association of Real Estate Boards, member of the Land Use Advisory Committee of the State Bureau of Planning and the Advisory Housing Committee of the New Jersey Economic Council.

let it do so by a minimum of a two-thirds majority. Then we need have less fear of influence.

The tax clause in our present Constitution was written for an agricultural economy. The principal form of wealth was in tangible property. True value meant something in those days. Today we live in a more complex economy and real property represents but a portion of our over-all wealth and yet it pays 80 per cent of the costs of government. What does true value mean? It has come to be a controversial issue among valuation experts; assessors, appraisers and even the courts have rendered different opinions of it. Does it mean bricks and mortar—reproduction cost? “No!”, say some experts. Cost is not value for an income-producing property. Does it mean the capacity to produce income? The same experts will say “not for specialty properties that are occupied and used by the owner.” Is it market value—the price which a willing purchaser will pay a willing seller? Many experts, fully aware of the vagaries, necessities and whims which motivate buyers and sellers, will say “No!” Price is not necessarily value under many circumstances. True value by itself is no longer an equitable concept as a tax base. As our industrial and commercial development in the State grows, true value can only penalize the home owner. Some other formula must be found. Such a formula, however, has no place in our basic law, but rather must be changed from time to time to meet changing conditions.

You are undoubtedly familiar with the dilemma of the tax assessor. He must be an expert real property appraiser. He must live on a small salary or have another job, and in many small towns where he is elected, he must keep enough friends to be re-elected. By law he must assess equally and at true value. If he does this and his fellow assessors in neighboring towns of his own county do *not* do it, then his taxpayers and his friends who elect him have to pay more than their fair share of county taxes. When he signs the ratable sheet he makes an affidavit that he has assessed at true value. Assessors are rarely elected because of their training, experience and background as appraisers, and are rarely re-elected if they live up to the letter of the Constitution. If they did all these things—and I will admit the occasional one proves the rule—if they work out an equalization program, as soon as an assessor's equalization of value program has been completed change sets in and it must be done over again, because in these days true value of real property is constantly changing.

If the Legislature through the years has seen fit to classify such forms of wealth as railroad property and intangible property for preferential tax treatment, why then, through a flexible tax clause, should it not be permitted to classify real property? The Legislature

has shown a willingness to try to solve our muddled tax methods. Should it be prevented from doing so by an inflexible tax clause designed for 18th Century use and application. If home ownership is to be encouraged in our State, it must have some relief from its present inequitable tax burden. It is the Legislature's job to do this. It is your job here to write our new Constitution so that the Legislature may do theirs. A flexible clause providing for classification and standards of value will aid immeasurably in the achievement of honest equality of taxation.

The statement has been made that a change in the tax clause is not as important as other constitutional changes, and further, that the burden of proof rests upon the proponents of such change. Such a statement shows a complete lack of understanding of the situation. The Legislature, aware of our taxing difficulties, thought it important enough to provide a State Tax Policy Commission for research and study. After years of careful work this commission has recommended these very changes. The Constitutional Revision Committee, which has spent thousands of dollars and years of time on these problems, want these changes. The state-wide organizations of practically every business that comes in contact with real property, have supported these changes. The highest executive officer of the State has made the same recommendations. Think of these facts:

- (a) Sixty per cent of all revenues raised in support of the municipal governments of our nation comes from property taxes. This is a nationwide average. And yet in New Jersey the average is 80 per cent.
- (b) The national average property tax is 40c per capita. The New Jersey average is 80c per capita. Double the national average and in some of our larger municipalities the per capita property tax goes as high as 92c and \$1.09.

Is there any further burden of proof? No change could be much worse.

The realtors of New Jersey, gentlemen, have asked me to come here to urge you to eliminate true value and to permit the establishment of classification of property and standards of value. From their experience they are sincere in their belief that these changes will encourage the development of our State and will encourage the Legislature to relieve the home owner from his present insufferable tax burden.

RECOMMENDATIONS OF
THE NEW JERSEY COMMITTEE FOR
CONSTITUTIONAL REVISION

*(Excerpts from the Committee's brochure, "Constitutional
Changes," May 1947)*

I. AN EFFICIENT AND RESPONSIBLE *EXECUTIVE* DE-
PARTMENT.

* * * * *

- E. Provide for executive budget and limit the power of the Legislature to increase or add to budget estimates or enact supplemental appropriations. Require a consolidated state fund and single fiscal year. (Not to include local taxes which are state-collected.)

* * * * *

II. EFFECTIVE AND RESPONSIBLE *LEGISLATIVE* POWER.

* * * * *

- D. Limit power of Legislature to enact:
(1) Tax exemption laws.

* * * * *

- 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.

* * * * *

MEMORANDUM OF NEW JERSEY COUNCIL OF CHURCHES

850 Broad Street
Newark 2, N. J.

August 4, 1947

Re: Transportation to Private Schools
Gambling Referendum

The reported intention of the Constitutional Convention's Committee on Taxation and Finance to recommend that the proposed new Constitution include specific support for the now nationally known New Jersey law authorizing local school districts to use public funds to pay the cost of transporting children to other than public schools will undoubtedly prove to be of great concern to a large proportion of the approximately 500,000 voting members of the 15 denominational bodies which constitute the New Jersey Council of Churches. It will also alarm those who are opposed to any action which may establish a constitutional precedent for the later use of additional public funds in support of private schools.

Strong pressure was exerted by our constituency upon the special committee which drafted our recommendations to the Constitutional Convention (see letter of June 30) to include a proposal that the new Constitution forbid the use of public monies in support of sectarian or other private schools, including transportation to such schools. Such a provision, if adopted, would make the law already referred to unconstitutional. Our committee successfully resisted this pressure in a desire to avoid raising an issue at this time which might jeopardize the commendable effort to secure a new Constitution.

The fact that the United States Supreme Court decision in support of our much discussed school bus law was so close and that the five justices supporting the majority opinion and the four dissenters were in complete agreement on the principle that no public funds should be used to support sectarian schools (the differences relating only to what constitutes support of sectarian schools), led us to feel that this problem could be resolved in other ways in the future and restrained us from projecting such a controversial issue into the process of drafting a new State Constitution.

Obviously, many of our constituents would be sorely tempted to vote against a proposed new Constitution which seemed to them to deny the principle of the separation of Church and State. The fact that the main, if not the only, group of citizens who desire the inclusion of specific support for the school bus law in the new Constitution are communicants of the Roman Catholic Church, the

only major Christian church that does not recognize the validity of the churchmanship of the clergy and laity of other Christian churches, leads me to anticipate with regret the possible result if the proposal of your Committee on Taxation and Finance is supported by the Convention. It is to be regretted that Roman Catholics insist on so sharpening, at this particular time, the issues which divide us, rather than following a procedure which would allow all of us to meet such issues more deliberately and calmly when the much needed new Constitution is not at stake.

I would now like to turn your attention to what I and many others, within and beyond the constituency of our Council, believe to be a much more important phase of this problem. It has to do with the primacy of the public school in a democracy. As the father of three public school graduates and as a member of the board of education in my home community for the last 8½ years, I have become firmly convinced that the democratizing influence of a common school for all of the people is a prime essential in a dynamic democracy such as ours. I support the two-fold principle (1) that the State is responsible for seeing that every child receives an adequate education, and (2) that to the parents of each child should be reserved the right to determine which approved school, public or private, he should attend. On the other hand, I would strongly oppose any approach toward the disintegration of our public school system through any recognition of public financial obligation to sectarian or private schools.

To constitutionalize the recent New Jersey school bus law would be considered by those who share this latter concern to be a possible step toward other financial contributions to private schools, as has happened in certain other states. If such a trend were to develop it could very easily lead to the establishment of more parochial schools, non-Roman as well as Roman, and a resulting fragmentation of the common culture toward which the public school now makes such an outstanding contribution. We fear the possible results of any seemingly small step that establishes a precedent out of which such a development might come.

It would be well to note the very marked difference between providing federal or state subsidies for hot lunches and certain medical services for children in *all* schools, and the use of public funds for paying the cost of transporting pupils to sectarian or other private schools. The former is a public health measure which uses the school as a convenient center through which the children may be so served. The latter financially facilitates the attendance of children at a school selected by their parents and thus puts the people as a whole in the position of aiding sectarian or private schools in the enrollment of pupils who would otherwise attend the public schools.

I would call your attention to the fact that the Committee on Taxation and Finance has failed to conduct an open hearing at which the opponents of this proposal could present their case. We regret this procedure, which seems to arise out of a desire to avoid stirring up the issue through such discussion or a hope that it might pass unnoticed. If the Committee was motivated by either or both of these considerations it is my humble opinion that it made a grave error in judgment.

As to the gambling issue, I am sure that I speak for all who represented our Council at the two hearings conducted by the Committee on the Legislative when I say that we appreciate the patience and good spirit of the members of that Committee. We feel that the Committee arrived at the wrong conclusion but we are confident that it did what the majority of its members felt was most practical or best for the State as a whole. We take this opportunity of calling to your attention the recommendation of our Council (see letter of June 30) that no reference to gambling, for or against, be contained in the new Constitution. We made this recommendation because of our faith in the ability of the people to govern themselves from year to year through democratic processes and in accordance with the lessons of experience. We would rather exercise this faith in the processes of legislative democracy than to use the constitutional, basic law as a means of seemingly settling such dynamic issues, the recognized moral, social and economic consequences of which may change so rapidly.

Having expressed its opinion on the gambling issue, it must be expected that the attitude of our Council and its constituents toward the final draft of the whole Constitution will be seriously affected by the action of your Convention on this as well as other issues which we consider to have important implications for society as a whole and for the individuals who constitute it.

As to meeting the cost of transporting children to *all* schools, we would repeat that what has been said in this letter has not come before our Council, the next meeting of which will not be held until after your Convention completes its work. I can only say that it has been written, to the best of my ability, in anticipation of the probable action of the Council and its member church bodies. A copy is being mailed to every delegate to the Constitutional Convention, but we have not released it to the press. However, copies, marked confidential, are being mailed to a number of other leaders in our State who are greatly concerned, as we are, about the work of your Convention.

Sincerely yours,
HENRY REED BOWEN, *General Secretary*

LETTER OF STATE OF
N. J. FEDERATION OF AMERICAN
PATRIOTIC SOCIETIES

1 West State Street
Trenton, New Jersey

August 8, 1947

To the Members of the Constitutional Convention of 1947

Dear Members:

I regret that it is necessary for me to write you in reference to purported revision of the Constitution of New Jersey. The group of organizations of which I am president, had not intended to take any part in trying to use any influence whatsoever, for, or against, any article that might be placed in the Constitution for the citizens of New Jersey to vote upon. We had confidence enough in you as a Committee to believe that you would submit to the people of New Jersey a Constitution that would be fair and just for the people of New Jersey to adopt. I note in the press that the name of the Jr. O. U. A. M. of New Jersey has been used. As of this date, no person has had any authority to speak for the five organizations herein listed, hence our reasons for stating our position in regards to bus transportation for children to and from schools other than a public school.

When the original bill, known as Senate Bill No. 152, was presented, the State Council of New Jersey, Jr. O. U. A. M., asked for a public hearing, which was granted, with the following organizations appearing against the Bill:

Federated Boards of Education of New Jersey
New Jersey Educational Society
New Jersey Taxpayers Association
Jr. Order United American Mechanics of New Jersey
Seventh Day Adventists

The only persons appearing in favor of the bill were the officials of the Roman Catholic parochial schools.

Senate Bill No. 152 became law in 1941, and free transportation to private schools started shortly thereafter.

The Jr. O. U. A. M. of New Jersey questioned the constitutionality of the act, and on recommendation of the legislative committee of that organization, secured Mr. Arch R. Everson, a property owner of the Township of Ewing, County of Mercer, to bring action against the board of education in the Supreme Court of New Jersey for providing such transportation.

The five organizations of which I am president have as one of their cardinal principles the complete separation of Church and State, and each person upon becoming a member must take an obligation to that effect. We bar no person on account of his religious beliefs. We have members from many different religious denominations and also members who have no religious affiliation.

In order to uphold our principles, we oppose this type of legislation, as we believe that a union of Church and State is taking place when the people are taxed to support any arm of a religious denomination. The question has been asked, "Is this a fight against the Roman Catholic Church?" I answer that question by saying, the Roman Catholic Church is the only religious organization in New Jersey that has asked for and received public support. Therefore, we as organizations are compelled to oppose them. If the Protestant churches were to ask and receive the same support, we would oppose them just as strenuously. The question of support for religious schools should never have been brought to the Legislature of New Jersey, or any other state. We must consider that from late reports, there are slightly under 25 million Roman Catholics in the United States. That would leave approximately 120 million non-Roman Catholics. Over 45 per cent of our population (by estimate) have no religious affiliations, and should not be taxed for the support of religious schools. In Supreme Court Justice Jackson's opinion in this case (joined in by Justice Frankfurter) he states, and I quote:

"I should be surprised if any Catholic would deny that the parochial school is a vital, if not the most vital, part of the Roman Catholic Church. If put to the choice, that venerable institution, I should expect, would forego its whole service for mature persons before it would give up education of the young, and it would be a wise choice. Its growth and cohesion, discipline and loyalty, spring from its schools. 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."

We feel the need of constitutional revision in New Jersey and hope we may be in a position to support such revision when presented. We do not feel, however, that any hardship or discrimination can take place if we place in our Constitution a clause forbidding the use of public money for any school other than the public school.

Thomas Jefferson and James Madison persevered for seven years until they finally had placed in the Virginia Constitution, laws providing for complete separation of Church and State, which later became part of the Constitution of the United States, as the First Amendment of the first Article of our Bill of Rights, establishing a complete separation of Church and State.

We have progressed since 1789 by this Constitution. The various

religious denominations have lived together in peace, all respecting each others beliefs.

Why is it so necessary to change now? Already, a bitter religious controversy is being waged from coast to coast, and it is becoming greater.

We have confidence enough in your Committee to believe that you will give just consideration to the aforementioned facts.

Very truly yours,

GEORGE G. GRAY, *President,*

State of N. J. Federation of
American Patriotic Societies

BRIEF OF NEW JERSEY HIGHWAY USERS' CONFERENCE

CONTENTS

- I. FOREWORD
- II. SPONSORS
- III. CONSTITUTIONAL PROVISION—Copies of Suggested Amendments
- IV. BASIC FACTS—Questions and Answers Relative to the Amendment
- V. MAP—Shows Nationwide Progress Toward Protection of Special Highway User Tax Revenues
- VI. BRIEF—Benefits to be Derived Through Inclusion of Amendment in the Revised Constitution
- VII. STATEMENTS—Regarding Protection of Special Highway User Taxes by Organizations Interested in the Welfare of New Jersey

FOREWORD

Trenton Trust Building
Trenton 8, N. J.

July 10, 1947

The citizens of New Jersey cannot be indifferent to the establishment of broad and lasting policies guiding the development of the state highway system. Highways sustain the growing industry, tourist trade, agriculture and the every-day traffic of modern society. Continued economic development and the security of our people depends largely upon the ability of the State to provide and execute long range highway plans.

Since its adoption, the State Constitution has been an instrument of the people of New Jersey. It is an instrument by which they not only delegate and divide the powers of the legislative, judicial and administrative branches of government but by which they also lay down certain limitations of power and enunciate the fundamental rules by which these branches of government are guided.

It is in these fundamental principles we find as proper the submission to a vote of the people a constitutional provision dedicating special highway user taxes to road purposes.

Respectively submitted,

HERBERT W. VOORHEES, *Chairman*

SPONSORS

Organizations Supporting a Constitutional Provision To Safeguard Special Highway User Tax Revenues:

New Jersey Conference of AAA Automobile Clubs
 Keystone Automobile Club
 Automobile Legal Association
 New Jersey Farm Bureau and Allied Farm Organizations
 New Jersey State Grange
 New Jersey Motor Truck Association
 New Jersey Petroleum Industries Committee
 New Jersey Association of Township Committeemen
 New Jersey Resort Association
 New Jersey Gasoline Retailers Association & Allied Trades, Inc.
 New Jersey Automotive Trade Association
 United Commercial Travelers of America
 Fuel Oil Distributors Association of New Jersey
 New Jersey Bottlers of Carbonated Beverages Association
 New Jersey Rural Letter Carriers Association
 Association of Chosen Freeholders of New Jersey
 New Jersey Furniture Warehousemen's Association
 New Jersey Motor Bus Association, Inc.
 New Jersey Society of Professional Engineers

CONSTITUTIONAL PROVISION

DRAFT NO. 1

The following to be inserted at proper place in the revised Constitution:

"No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than cost of administering such laws, statutory refunds and adjustments allowed therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges, and expense of enforcing state traffic laws."

DRAFT NO. 2

*(Article VII of the former proposed Constitution for the State of New Jersey, covering the subject "Finance," revised in order to incorporate an amendment prohibiting diversion of highway funds and also to earmark such funds in the "Single Fund to be known as the General State Fund," created by paragraph 2 of Article VII)*¹

1. The credit of the State shall not be directly or indirectly loaned in any case.

¹ New material in italics; deleted material in brackets.

2. All revenues of the State Government from whatever source derived, including revenues of all departments, agencies and offices, shall be paid into a single fund to be known as the General State Fund and shall be subject to appropriations for any public purpose. *This paragraph shall also apply to the following funds which are hereby dedicated to the purposes indicated:*

- (1) [to] Moneys which may be received or held in trust or under grant or contract for restricted use or which must be received or held in a particular manner in order to receive a grant or which may be payable to any county, municipality, or school district of the State,
- (2) *Moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, which moneys shall be expended for no other purpose than cost of administering such laws, statutory refunds and adjustments allowed therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges, and the expense of enforcing state traffic laws.*

Nothing in this paragraph shall prevent or interfere with any payment of state revenues to, or any direct or indirect collection or retention of state revenues by, any county, municipality or school district which payment, collection, or retention, may be provided by law. Nothing in this paragraph shall abridge the right of the State to enter into contracts.

3. (Same)
4. (Same)
5. (Same)

BASIC FACTS

1. Is a constitutional provision dedicating special highway user taxes to road purposes a proper subject for the consideration of the delegates to the Constitutional Convention?

Yes. The establishment of broad and lasting policies concerning the development of our all important transportation system are of concern to every segment of our population, industry, and agriculture. The citizens of New Jersey should be given the opportunity of establishing such policy at the polls in November.

2. Would such a provision impose upon the prerogatives of the Legislature?

This is not a matter of not trusting the Legislature to be reasonable and sensible about diverting highway funds, but

rather a matter of trusting the sound sense of the people by giving them the opportunity to vote on the disposition and use of their own special highway user taxes.

3. Is the theory and practice of a constitutional dedication of highway user taxes new?

By a vote of the people at general elections, constitutional amendments dedicating special highway user taxes to road purposes have been approved in 19 states. During the next year, the people of Massachusetts, Tennessee and Florida will be given the opportunity of voting on similar amendments.

4. Is such provision important to the growth of New Jersey?

It is. Sound long-range highway planning requires a guaranteed income if the State is to proceed on a business basis. Generous appropriations today and none tomorrow will not permit advanced long range planning. Robbing Peter to pay Paul avoids the problem and hinders the full development of the State's most important assets—its highways.

5. What is the relationship between this constitutional provision and public safety?

Reduction in the staggering totals of highway deaths and injuries has become the nation's first safety problem, one that is studied in schools, courts, highway departments and among civic-minded groups and clubs. While the fault lies principally with the man behind the wheel, it is recognized that only through long-range planning can safety features be embodied in our highway system. Assurance of such planning depends upon assured funds. The assurance of funds rests with the people.

6. Is it of interest to New Jersey industry?

Yes. New Jersey's phenomenal industrial growth during the past two decades can be attributed to location, access to raw materials, access to markets, all made possible by an integrated system of highways. There is little question of the need to eliminate the transportation bottlenecks of Northern New Jersey, and there is little question that the \$150,000,000 diverted from the Highway Fund to general purposes would long since have remedied current highway congestion centering about our industrial cities.

7. Would a constitutional provision be of interest to New Jersey labor?

Yes. The great majority of workers in this State depend upon automobiles and buses to reach their places of employment. Economical, fast transportation is of importance to them. Furthermore, one worker in every six in New Jersey is employed in automotive trades. No form of public works

uses more labor than highway construction. Consequently, labor has an interest in the full use of special highway user taxes for road construction and maintenance.

8. Is it of interest to New Jersey's great tourist industry?

New Jersey's 100-mile shore line is within a day's journey for thousands of motorists in the metropolitan New York and Philadelphia areas. Our shores are frequented by millions of our own citizens. Elimination of bottlenecks, and the guarantee of adequate traffic facilities are of interest not only to the vast tourist industry of the State but also to vacationists.

9. Would a constitutional provision be of interest to New Jersey farmers?

Yes. Practically all produce raised on New Jersey farms is transported over the highways. Operating in a relatively high labor and overhead cost area, the profit margin of the New Jersey farmer depends upon his ability to deliver fresh produce to nearby metropolitan consumers. The dedication of highway funds will guarantee convenient and economical transportation.

10. Does a constitutional provision have any relation to the security of our State?

Absolutely. During the war, a civilian defense survey of New Jersey highways, by competent engineers and military authorities, found that New Jersey highways constituted a serious wartime bottleneck. Not only does our own industry rely upon fluid highway transportation, but the highways of the State are thoroughfares for a large part of transcontinental movement of goods by truck. Several of New Jersey's highways have the distinction of serving the nation's heaviest truck traffic.

BRIEF

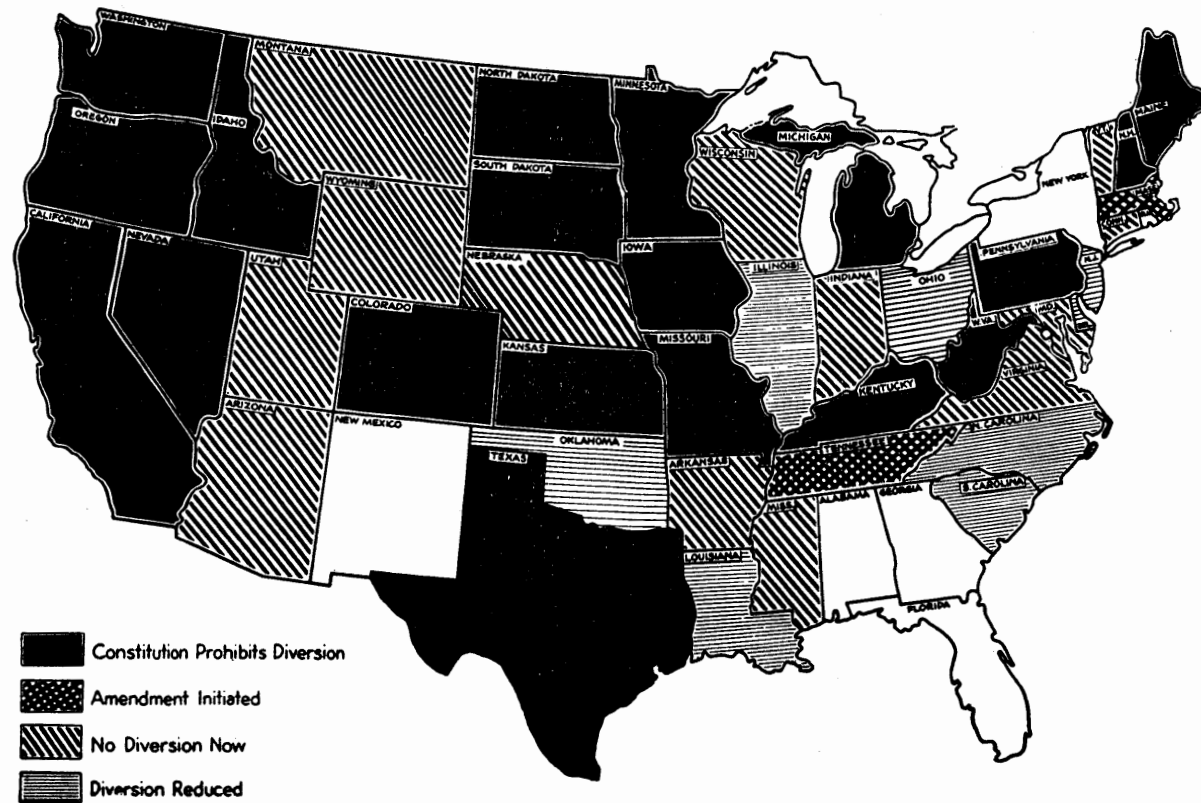
A CONSTITUTIONAL PROVISION TO PROTECT NEW JERSEY'S HIGHWAY FUNDS

I. Purpose of the Provision

Purpose. The purpose of the proposed constitutional provision is to assure that revenues from motor vehicle registration fees, from the state gasoline tax, and from other special taxes and fees levied on motor vehicles shall be used exclusively for highway purposes, including construction, maintenance, administration and highway bond service.

Dedication of Highway Funds to Local Units in New Jersey At-

NATIONWIDE PROGRESS TOWARD PROTECTION OF SPECIAL HIGHWAY USER TAX REVENUES



ready Established by Law. The principal of dedication of highway funds in New Jersey is not new. In effect, the practice of dedicating highway funds to counties and municipalities has been followed in this State for many years. This principle and practice received recognition and reaffirmation in the 1945 law which specifically states:

"The moneys in said special state aid road fund account are hereby deemed and declared to be dedicated funds, and shall not be used for any purpose other than herein provided."

Section 52:9H-4 of the *Revised Statutes* (1945) further states:

"Nothing in this act (chapter) shall be construed to change or affect in any way the payment or the amount of payment of moneys now or heretofore made under any items designated in former state highway appropriation acts as 'mandatory dedications' or the payment or amount of payment of any moneys into or out of any dedicated funds."

If this principle has been recognized as desirable at the local level, then it logically follows that it is even more desirable that funds available for state highways be protected. This can only be assured through the adoption of a constitutional provision.

Justice of Dedicating Special Automotive Taxes Recognized in 19 States. The equity and justice of dedicating the revenues from special automotive taxes to road purposes has been recognized by 19 progressive states which have adopted constitutional amendments to this end. A number of other states have taken initial steps towards adopting legal safeguards for highway funds. In all of these states where the people have been given an opportunity to vote on the adoption of such constitutional provisions, they have approved them by large majorities. The people of New Jersey should be given the same opportunity to decide this question, which is of vital interest to every citizen of the State. This is true because highway transportation in all its phases affects, directly or indirectly, the lives and welfare of every man and woman in the state.

Diversion in New Jersey Breach of Intent of Original Law. Automotive taxes are special taxes, and revenues therefrom were originally dedicated by legislative action to highway purposes. Subsequent legislative action diverting these funds represented a breach of the intent of the original law. Since the first tax on gasoline was levied in Oregon in 1919, the underlying principle was that the funds derived from the tax should be used exclusively for road purposes. This same principle was recognized and followed by all other states which subsequently imposed a tax on gasoline. New Jersey held fast to this principle until the depression years, when economic exigencies caused a departure from it. Further evidence that all revenues from the gasoline tax were originally intended solely for highway purposes is found in the provision for a refund of the tax on all fuel not actually consumed on the highways.

II. Economic Reasons for Adoption of Provision

Necessary for Long-Range Highway Planning. In order to plan and carry out a sound, long-range highway improvement program with a minimum of waste, extravagance and inefficiency, the State Highway Department must know what revenues it will have at its disposal. It cannot do this unless a provision is written into the Constitution guaranteeing that the funds will be available for expenditure when needed. This is a basic and fundamental requirement for sound business procedure.

When state highway funds are subject to being drawn upon for non-highway purposes, it severely handicaps the Highway Department in formulating sound long-range highway development plans. We see today the evil effects of the diversion of \$150,000,000 from state highway funds in traffic bottlenecks, particularly in the northern section of our State. If this money had been devoted to roads the present congested traffic conditions in these areas would not exist. Past experience provides the strongest argument for adoption of a constitutional safeguard against a repetition of this uneconomic practice.

Protection of Road System Insures Future Prosperity. Highways are the life blood of the State. The civic, commercial and industrial prosperity of New Jersey is dependent upon the maintenance of a modern highway transportation system. Nearly 800 communities in New Jersey, or approximately 44 per cent of the total, are not served by railroad and consequently are wholly dependent on highway transportation. Many of our large cities receive all of their milk by motor truck. The great bulk of agriculture produce is transported by truck. Nearly every product or commodity, in raw or finished state, is carried at some stage of its journey to the consumer by motor transportation. Highways form an indispensable link between rural and urban areas, between home and school, church and stores. In fact, highway transportation touches the life of every citizen in the State.

Highways Important to Recreational Industry. Moreover, the importance of our highway system extends beyond our state boundaries. This is true for a number of reasons. In the first place, the recreational assets of New Jersey rank as a major industry along with farming and manufacturing. Millions travel, not only within our own State, but from other areas both near and far, to enjoy the great natural charm and beauty of the seashore, mountains and lake resorts. In 1940 recreational expenditures totalled \$200,000,000, a figure which will be far exceeded this year. Obviously, if we are to capitalize to the fullest extent on these attractions, we should see to it that all revenues from automotive taxes are devoted to the improvement of our highway system.

Highways Important to National Defense. New Jersey is a "bottleneck" or "through" state in the over-all highway transportation picture. In other words, practically all motor traffic from northern to southern sections of the country and from eastern to western states passes through some part of New Jersey. That is why good highways in New Jersey are so important from a national defense standpoint. It was found from a survey of road conditions in our State during the war that there were serious deficiencies in our highway system which impeded the free flow of war material and manpower. We must not allow this to happen again, and it will not happen if we devote the large and increasing volume of revenues which is accruing from our present rate of automotive taxes to highways.

Highways must Keep Pace with Automotive Progress. The mounting traffic toll on the highways is a source of increasing concern to our national and state officials. Although the "man behind the wheel"—the human element—is the primary factor in nearly all highway traffic accidents, nevertheless certain structural deficiencies in the highway system is a contributing cause. This is another important reason why every effort should be concentrated on removing existing deficiencies, and providing that in future highway development steps are taken toward the adoption of every practical safety measure in the designing of our highways. This can be done within the framework of existing automotive taxes (which will yield increasingly large revenues) provided that these revenues are all applied exclusively to highway purposes.

For these and many other reasons, the future development of our State highway system is of vital interest to every citizen of New Jersey. Consequently, the people of New Jersey are entitled to and should be given the opportunity of rendering their decision on the important question of adopting a provision in the State Constitution which will guarantee that all special automotive taxes will be dedicated to highways—an inalienable right which has been exercised by the citizens of so many other states.

STATEMENTS

NEW JERSEY SOCIETY OF PROFESSIONAL ENGINEERS

86 E. State Street
Trenton 8, N. J.

June 24, 1947

The enclosed resolution is self-explanatory . . . and was officially approved at the 23rd Annual Convention of the New Jersey Society of Professional Engineers held in Newark, N. J., on April 11 and

12, 1947. In its approval, the officers and trustees of our Society specifically directed me to bring the text of the resolution to the attention of all delegates sitting in convention for the purpose of revising the Constitution of the State of New Jersey.

We, therefore, urge your serious consideration and earnestly hope that you will do everything possible, individually and collectively as a body, to bring about a revised section of our State Constitution that will parallel the aims and objectives expressed in the enclosed resolution.

Thank you for your courtesy and cooperation.

Sincerely,

CHARLES J. DODGE, *Managing Director*

RESOLUTION

WHEREAS, one of the greatest and most urgent engineering problems in the State of New Jersey today is the necessity of extending, expanding and modernizing the State's highway system; and

WHEREAS, the urgency is well-recognized by many of the citizens of the State and all citizens are affected directly or indirectly by lack of adequate highway facilities; and

WHEREAS, funds for construction and maintenance of highways are derived from registration fees, drivers' licenses, and gasoline taxes, supplemented by federal aid funds; and

WHEREAS, the gasoline tax is considered a most equitable form of taxation, with the highway user paying in proportion to highway use, provided, however, the funds derived are devoted to the use for which they were created; and

WHEREAS, the law providing federal aid funds penalizes states that divert motor vehicle funds from such uses as those originally intended;

NOW, THEREFORE, BE IT RESOLVED, that the RARITAN VALLEY SOCIETY of PROFESSIONAL ENGINEERS go on record as opposed to any diversion of motor vehicle funds in the State of New Jersey; and

BE IT FURTHER RESOLVED, that this resolution be submitted to the coming annual convention of the New Jersey Society of Professional Engineers with the request that the state society consider similar action, and advise all interested state officials of the action of the membership of the state society on this vital matter;

NOW, THEREFORE, BE IT RESOLVED, that the NEW JERSEY SOCIETY OF PROFESSIONAL ENGINEERS in annual convention, assembled on April 12, 1947, go on record concurring in the recommendations contained in the above resolution with a recommendation of the resolutions committee that this resolution be considered by and referred to the Constitutional Convention charged with the

duty of revising or reforming the present State Constitution in such part, or parts, as the Convention shall deem in the public interest.

Unanimously adopted

NEW JERSEY HIGHWAY USERS' CONFERENCE
Trenton Trust Building
Trenton 8, N. J.

June 26, 1947

The following organizations in meeting at Trenton, N. J., on Tuesday, June 24, 1947, reiterated the position stated in the attached resolution, adopted at the annual meeting on March 4, 1947, with respect to the fairness and equity of permitting the people of New Jersey to vote on the question—whether or not the special taxes paid by highway users for highway construction and maintenance should be dedicated to these purposes by constitutional provision:

New Jersey Conference of AAA Automobile Clubs
Automobile Legal Association
Keystone Automobile Club
New Jersey Farm Bureau
New Jersey State Grange
Fuel Oil Distributors Association of New Jersey
New Jersey Automotive Trade Association
New Jersey Gasoline Retailers Association & Allied Trades, Inc.
New Jersey Furniture Warehousemen's Association
New Jersey Resort Association
New Jersey Association of Bottlers of Carbonated Beverages
New Jersey Petroleum Industries Committee
Association of Chosen Boards of Freeholders of New Jersey
New Jersey Association of Township Committeemen
New Jersey Motor Truck Association

We know you will give this question your thoughtful, considered study, and we hope you will come to the conclusion that this is a question for the people to decide.

Yours very truly,

HERBERT W. VOORHEES, *Chairman*,
New Jersey Highway Users' Conference

RESOLUTION

WHEREAS, highway user taxes in the form of automobile registration and license fees and gasoline taxes have been collected from the motorists of New Jersey to finance the construction and maintenance of our highway system; and

WHEREAS, over \$150,000,000 of these funds have been diverted to

purposes wholly unrelated to highways since 1931, resulting in the curtailment of vitally needed expansion and maintenance of our highway system; and

WHEREAS, the citizens of 19 states have already adopted constitutional amendments protecting their highway funds, and several additional states will act on similar amendments this year; and

WHEREAS, the Legislature has passed a measure authorizing a Constitutional Convention, if approved by the people; and

WHEREAS, the Constitutional Convention will draft a new Constitution in whole, or in part, for submission to the electorate at the next general election;

NOW, THEREFORE, BE IT RESOLVED, that the NEW JERSEY HIGHWAY USERS' CONFERENCE urge the delegates to the Constitutional Convention, when elected, to include a section in the new Constitution, dedicating all highway revenues for highway purposes only, or give the people an opportunity to vote separately on this question; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Governor, the Convention delegates, and members of the New Jersey State Legislature.

Adopted: March 4, 1947

NEW JERSEY AUTOMOTIVE TRADE ASSOCIATION
24 Branford Place
Newark, N. J.

July 1, 1947

The automobile dealers of New Jersey, through this Association, have always taken a vital interest in the development of the highway system of our State.

Years ago we recognized the importance of a sound, long-range financing program which would assure a state highway system second to none in the country.

We have consistently urged that the revenues from the gas tax and motor vehicle fees be dedicated to the highway system. The fact that over \$150,000,000 has been diverted from these revenues during the past years, is the reason we today find ourselves with an inadequate highway system.

The increasing death toll and the injuries caused by traffic accidents in this State is appalling. . . . For the protection of life and limb of our citizens and for the benefit of the general economy of our State, we urge the Convention to favorably consider a provision in the draft of the new Constitution which will dedicate motor vehicle revenues to a highway fund. This will assure a sound financing policy which would permit of a continuing program to

improve our highway system which at present is completely inadequate and dangerous.

We believe such provision should be submitted to the citizens of our State.

Yours very truly,

W. L. MALLON, *Secretary*

AUTOMOBILE LEGAL ASSOCIATION

605 Broad Street
Newark, N. J.

The motorists of New Jersey pay special taxes in the form of gasoline taxes, license and registration fees to develop and maintain New Jersey's highway system. This is the only justification for the assessment of these special tax levies. The use of highway tax revenues for any other purpose is a breach of the intent contained in the original tax acts.

Past diversions of highway funds totaling over \$150,000,000 to finance *many* general costs of government have been not only unwise, as proven by existing traffic problems in North Jersey, but also indicative of lack of courage to face problems objectively. Equity and fairness should have indicated that if these special taxes were not needed for highways, then these taxes should have been reduced.

We know now that these tax revenues were needed for highways and they will be needed in the future. Sound, long-range highway planning requires a guaranteed income if the State is to proceed on a business basis. Generous legislative appropriations today and none tomorrow will not permit advanced long-range planning. Robbing Peter to pay Paul avoids the problem and hinders the full development of the State's most important asset—its highways.

We are intensely interested in the ever-growing problem of highway safety. We are making every effort through special campaigns to foster driver education in the hope that the present high number of highway accidents can be reduced. Here again, highway development enters the picture. Present and future construction programs must be geared to automotive progress and structural hazards eliminated.

The dedication of highway tax revenue is a controversial question and, as such, it should be decided by the people of New Jersey. This would be a fair and equitable decision and we hope you will approve such action.

Respectfully yours,

ALTA R. ELY, *New Jersey Manager*

MEMORANDUM OF FARM BUREAU AND STATE GRANGE
RELATING TO DEDICATED FUNDS

Among the controversial subjects before you there are few upon which we, as agriculturists, are more sensitive than the one relating to "dedicated funds." To us it seems as much a general question of common honesty, and the maintenance of good faith between the State and its citizens, as a special one of personal interest to rural residents. Of course, we have particularly in mind the motor funds dedicated to highway use, but we are not unmindful of our interest in the merit of other funds, particularly those for the benefit of firemen, in which already there is a considerable and a rapidly increasing stake of rural dwellers. And then there is the substantial rural interest in funds dedicated to the propagation and promotion of wild life, and to recreation.

In our memorandum to the Joint Legislative Committee of August, 1942, we presented our position upon this subject at some length. What was there said remains our firm conviction, and it seems unnecessary further to burden the record with its recital here. There is one subject, however, in which it does not seem that we have done full justice to our own argument. It relates to what was there said regarding dedicated funds for "special interests." As the context there implies, the "special interests" in political affairs referred to were those created for some special or personal welfare. But there is another variety of "special interest," little noted indeed, and in earlier days of little importance. There are those special or personal interests which belong to some substantial group of citizens but less than the entire citizenship, the protection and promotion of which appears in the "general" rather than in some "special" welfare. At first such interests were hardly known. Even highways usually were privately operated, and the postal service only a little more nearly approached a public institution. Then came the development of organized free public schools. But as society increases in complexity these special interests increase in numbers and in importance. So rapid has been this increase in recent years that many well-intending citizens, failing to make the proper distinction between a "special interest in the general welfare" and the "general welfare" itself, have been leading us from a "state of free people" to a paternalistic one, the goal of which route first is socialism or communism, then tyranny, and finally a complete return to some form of political absolutism.

That this distinction may be made more clear to all of us, should there not be made greater, rather than less, use of "dedicated

funds?" When the public services rendered can be made self-liquidating, as with fish and game, they should be. Sportsmen should pay for their fun. And they should not be taxed for the benefit of others. And this should be the case with all similarly situated. However, they should be taxed beyond the cost of service. To do so becomes unjust and unequal taxation. Highways are in a little different position. They render a definite public as well as a personal service. For the former, the public should pay; for the latter, the user should pay in so far as an equitable division can be made. That was the basis upon which the motor vehicle registration funds were based, and later the gasoline tax. The educational system is in a still different class. Here there is no revenue accruing from the service itself. But are not funds dedicated to such a service a sacred grant? Our forebears thought so when in Article IV, Section VII, paragraph 6, they made constitutional dedication of funds for that purpose. Or do those who regard that Constitution so out-moded that provision should be made for abrogation of that grant also? May we not hope that at least that trust will not be violated? And if not, the principle of dedication of funds will continue to have constitutional support. Then by what rule of equity may the same Constitution dedicate certain funds to a particular special interest for the general welfare, and deny power to the Legislature to dedicate other funds either to that or any other similar interest?

We are told that it would be done in the interest of orderly accounting and of economy. But how may either become a proper reason? Those who pursue the science of accounts long since solved and classified all problems that possibly could arise in such accounting. Is the argument hardly worthy the intellect of a normal adult? And economy, as such, has no relation to the subject. A dedicated fund is neither more nor less likely to be unwisely used or wasted than an undedicated one. Economy is economy, waste is waste. And both relate to individuals. Both depend upon the personnel which administers the fund, whatever it may be. And both honest men and spendthrifts will be found among all administrators. In themselves, neither dedicated nor undedicated funds either can spend or conserve. Nothing can be saved, nothing lost, through either statutory or constitutional dedication. The only thing gained by the interest affected is continued assurance of the benefits of the fund. The only thing lost to the general fund is the ability to spend that which in morals or through bona fide contract belongs to the special interest affected. We cannot help regarding the disposition to prevent the dedication of funds through constitutional prohibition

as an immoral effort on the part of general tax spenders to acquire that to which they are not entitled, and we cannot refrain from saying so. We have entire confidence that the delegates will be of similar opinion.

NEW JERSEY STATE GRANGE
FRANKLIN C. NIXON, *Master*
NEW JERSEY FARM BUREAU
HERBERT W. VOORHEES, *President*

FUEL OIL DISTRIBUTORS ASSOCIATION OF NEW JERSEY
1025 Broad Street
Newark 2, N. J.

July 2, 1947

Fuel oil dealers in the State of New Jersey sincerely urge that you act favorably on a constitutional provision dedicating highway user taxes for highway purposes only.

Fuel oil dealers in the State of New Jersey contribute a substantial amount in car and truck registrations, as well as gasoline taxes, and urge that this constitutional provision be included to dedicate highway user taxes so that these taxes be used for the purposes for which they are collected, highways, bridges, etc.

Very truly yours,

FUEL OIL DISTRIBUTORS ASS'N. OF N. J.
A. W. RICH, *Executive Secretary*

NEW JERSEY ASSOCIATION OF TOWNSHIP COMMITTEEMEN
The Farmhouse
168 West State Street
Trenton, N. J.

July 3, 1947

The State of New Jersey has a definite responsibility toward the maintenance of rural roads. In the horse-and-buggy days, townships were able to maintain local roads through a system of financing that went out with the introduction of the automobile and the heavy-duty trucks.

Today it is just as essential to build township roads with the same degree of durability and safety as our county and main-stem highways. These township roads must be built to carry at times ten to twenty-ton loads as well as the local traffic.

No longer is it possible to build and maintain these roads with taxes raised almost entirely from estate taxes. It is at this point that some long-range system of financing this public service must be adopted.

The New Jersey Association of Township Committeemen, representing more than 50 per cent of the townships in the State, believes that the revenues derived from motor vehicle taxes must be dedicated to the maintenance of our entire highway system.

Our Association recommends that there be included in the new Constitution a provision that all highway or motor vehicle revenues be dedicated to the original purpose for which they were raised, namely, for the construction and maintenance of these highways.

In the final analysis, this is a question that should be left up to the residents of the townships and municipalities to decide, whether their motor revenues shall be used for the full development of these rural areas or whether these funds be expended according to the rule of political expediency.

As an Association, we ask that this question be decided by the voters themselves.

Yours very truly,

AMOS KIRBY, *Secretary*

NEW JERSEY GASOLINE RETAILERS ASSOCIATION
AND ALLIED TRADES, INC.
City National Bank Building
241 Main Street
Hackensack, N. J.

July 3, 1947

You are currently engaged in the task of drafting a new Constitution for the State of New Jersey. On June 3 you were selected to represent the citizens of your county in these important discussions. Among those you so represent are several hundred members of this Association.

Each year the New Jersey Gasoline Retailers Association and Allied Trades, Inc., holds a convention to discuss and act upon many problems relating to the gasoline retail industry. The gasoline retailers of our State are vitally interested in the question of highway fund diversions, and are opposed to further distribution of these monies for other than highway purposes.

Delegates to this year's convention, held June 23-24, 1947 at Asbury Park, N. J., unanimously adopted the enclosed resolution, and directed that a copy be forwarded to you.

It is this Association's desire that you give this question every consideration. We would appreciate a note from you, indicating your position in this matter.

Very truly yours,

NEW JERSEY GASOLINE RETAILERS
ASSOCIATION AND ALLIED TRADES, INC.
JOHN DRESSLER, *Executive Secretary*

RESOLUTION

WHEREAS, motor vehicle owners pay special taxes in the form of automobile registration, license fees and gasoline taxes to finance the construction and maintenance of New Jersey's highway system; and

WHEREAS, the full development of New Jersey's highways, particularly in the industrial areas, has been retarded by past diversions of these special tax revenues to purposes unrelated to highway construction and maintenance; and

WHEREAS, future sound, long-range highway planning requires 100 per cent of these special taxes for highway purposes to maintain and protect New Jersey's investment in highways and provide the new highways essential to full economic development of agriculture, business and industry in New Jersey; and

WHEREAS, the people of 19 states have wisely adopted constitutional amendments protecting highway funds, and several additional states will act on similar amendments this year; and

WHEREAS, the people of New Jersey have authorized a Constitutional Convention to consider and recommend to the people revisions deemed necessary to meet changed conditions; and

WHEREAS, the Constitutional Convention, now in session, will draft a new Constitution in whole, or in part, for submission to the electorate at the next general election; now, therefore,

BE IT RESOLVED, that the NEW JERSEY GASOLINE RETAILERS' ASSOCIATION and ALLIED TRADES, INCORPORATED, at its annual convention in Asbury Park, N. J., June 23, 1947, does hereby urge the delegates to the Constitutional Convention to include a provision in the new Constitution, dedicating highway revenues for highway purposes only, or give the people an opportunity to vote separately on this important question; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to all Convention delegates.

Adopted: June 23, 1947.

NEW JERSEY MOTOR TRUCK ASSOCIATION

973 McCarter Highway

Newark 2, N. J.

July 3, 1947

The New Jersey Motor Truck Association is the recognized state association of motor truck owners, comprising in its membership common, contract and private motor carriers of property. The for-hire carriers, as represented by the common and contract operators, provide transportation service to the public, whereas the private carriers transport their own goods.

For a number of years our organization has advocated a constitutional amendment to dedicate highway users' tax payments for highway purposes. As substantial payers of motor vehicle use taxes, ostensibly for the construction, maintenance and improvement of our highway system, we have seen millions of our dollars diverted to purposes entirely unrelated to highways.

It is our sincere and unselfish view that motor vehicle revenues should be devoted entirely to highway purposes. This is a sound principle, and wherever it has been applied it has resulted in thousands of miles of modern, safe roads which would not have otherwise been built. And furthermore, this has been accomplished with a minimum of financial strain, on a cash or pay-as-you-go basis, and at equitable tax rates.

We should also like to bring to your attention that highway construction and maintenance is not a sporadic governmental service; it is a continuing obligation, and one of the State's most important functions. Our neglect and failure to meet this responsibility has been in a large measure responsible for the devastating toll of injuries and deaths, and the resulting tremendous economic waste in our State. We cannot, should not, neglect this obligation and responsibility in the future.

Certain funds are now dedicated. For example, the 1945 Legislature guaranteed highway appropriations in set amounts to local divisions of government (*R. S. 52:9H:1*), yet no protection is given to the main problem of a sound, long-range highway plan geared to automotive purposes.

We believe that it is only fair that the Constitutional Convention submit the question of safeguarding motor vehicle revenues (which after all are special taxes paid for a special purpose, namely, the privilege of using the highways), to the people of New Jersey for determination.

Yours very truly,

D. J. CRECCA, *Manager*

NEW JERSEY STATE GRANGE

149 Main Street
Vincentown, N. J.

July 3, 1947

The New Jersey State Grange has devoted itself over the years to the improvement of the rural road system of New Jersey. To date the State has done an excellent job in improving rural roads. But there is still a big job to be done.

The practice of diverting motor vehicle revenues to purposes other than highway maintenance and construction not only consti-

tutes a threat to the full development of the rural highway system, but also unjustly burdens farmers and other rural residents by assessing them more than their share of the general tax burden of the State and denying them the highway improvements for which they have paid.

We of the Grange are convinced that a successful road program cannot be accomplished unless adequate protection is provided for our highway funds. For years we have advocated the adoption of a constitutional amendment dedicating motor vehicle taxes to highway purposes as the only practical solution to the State's highway problem.

Once again we ask that the problem of highway development be considered realistically. It is a question important not only to agriculture, but also to the business and industrial progress of New Jersey. It is a question for the people to decide, and we sincerely trust that fairness will dictate a course of action that will permit New Jersey citizens to vote on this question.

Yours very truly,

FRANKLIN C. NIXON, *Master*

NEW JERSEY RESORT ASSOCIATION

July 4, 1947

The New Jersey Resort Association proved first in 1943 that recreational travel is our State's largest industry. Since that time, with a gross income exceeding \$300,000,000, this gigantic business will almost double in 1947 to produce about three-quarters of a billion dollars for the economy of New Jersey!

The mountain, lake and seashore resorts of New Jersey provide a growing year-around economy which is dependent almost entirely upon *good roads*. The national reputation of New Jersey in the highway field has contributed to their development, even as our vacation centers have themselves acted as great healthy magnets to bring millions of visitors into New Jersey.

This Association favors the inclusion of the question of dedicated highway funds exclusively for road purposes as a public referendum item to be brought before the voters at the polls in the general election this November. Only in this fashion may we insure once and for all the right of the people to decide this vital question of sound economic policy.

The officers of the Association, representing 100 seashore, mountain and lake resorts stand ready to provide your Committee with

ample evidence for the need of this reform in the fiscal policy of New Jersey at public hearings.

I am,

Very cordially,

GEORGE M. ZUCKERMAN, *President*

NEW JERSEY CONFERENCE OF AAA AUTOMOBILE CLUBS

The New Jersey Conference of AAA Automobile Clubs has expressed publicly for many years their firm belief that the special tax revenues paid by the motorists of New Jersey should be used only for highway purposes. Past diversions of these revenues for purposes unrelated to the sound and continuous development of New Jersey's highway system have disregarded the original intent of these special tax levies.

Nineteen States have placed this question where it belongs—before the people of these States—and the result has been the adoption of 19 constitutional provisions dedicating special highway tax revenues to highway purposes. The people of three more States will vote on this question at the next election. This is the fair way to handle a controversial question.

New Jersey has a particular interest in the welfare of its highways. No other asset has contributed more to the economic well-being of the State. Yet we have only scratched the surface of future highway development that will make New Jersey a greater industrial business, resort and farm state. All this will require substantial sums of money—improvements in the industrial area of North Jersey are an example—and if the State is to proceed on a sound, scientific, well planned highway program that keeps in mind the motorist taxpayer's ability to pay, then we must safeguard these special tax revenues so that plans can be made with a knowledge that the revenues will be available. Sound progress in highway development geared to future needs is not like building a house. Long-range planning based on anticipated revenues is essential.

You know, too, of the vital interest of the AAA in furthering highway safety. The horrible toll of highway accidents is a cause for worry to every thinking American. Our Organization is carrying on a continuous campaign of driver education in an effort to curb the growing toll of highway accidents. Here again, our highways must keep pace with progress. Many structural hazards in our highway system must be corrected, and they will be, if the motorists of New Jersey are assured that highway revenues will be used for only highway purposes.

It is good business to plan ahead and assure continuous develop-

ment of New Jersey's economic life. But, to plan ahead you must know where you stand financially.

It is only fair and equitable to say that with so much at stake the citizens of New Jersey have a right to decide this question.

For these and many other reasons we sincerely hope that you will agree with us, and that a provision to dedicate highway funds will be submitted to the people for their decision.

Sincerely yours,

NEW JERSEY CONFERENCE OF
AAA AUTOMOBILE CLUBS

N. A. K. BUGBEE, *Chairman*

KEYSTONE AUTOMOBILE CLUB

Trenton Office
108 W. State Street
Trenton 8, N. J.

July 7, 1947

In your consideration of subjects involving changes in the State Constitution we strongly urge inclusion of an amendment dedicating motor vehicle taxation and fees to highway and related purposes.

Our advocacy of this important step is based on the absolute need for the segregation of motor taxation to assure long-term planning of highway improvements, which is not possible when diversion is an ever-present threat and the total of funds for road building is always subject to legislative expediency.

We present for your consideration the following points which appear to us to have vital bearing on the subject:

1. Adoption of an anti-diversion constitutional amendment would line up New Jersey with 19 other progressive states which have already thrown constitutional safeguards around their motor funds and protect it against loss of federal-aid highway funds as penalty for diversion of its own automotive taxes.

2. A solid block of anti-diversion states in the East, with Pennsylvania and New Jersey as a nucleus, would assure in the years to come a superb system of highways in the area most travelled by New Jersey motorists.

3. New Jersey needs every cent collected through gasoline taxes and motor vehicle fees for the perpetuation and improvement of its highway networks. Increased traffic in the coming years will overwhelm many of the roads considered adequate before the war. Modernization of our highways must go hand-in-hand with increased use, with costly grade separations assuming top priority in highway planning as a "must" safety measure.

4. Motorists consider the gasoline tax and motor vehicle fees equitable when used for highways and related purposes, but they object to such levies when funds are diverted to purposes unrelated to highways and highway safety.

5. Such an amendment will provide a constantly growing motor fund, which will build up year by year as motor vehicles increase in numbers and use. There can be no question of an over-sufficiency of funds.

With assurance of our cooperation in any detailed discussion of the points here enumerated, we are,

Very truly yours,

KEYSTONE AUTOMOBILE CLUB

NEW JERSEY BOTTLERS OF CARBONATED BEVERAGES

199 No. 12th Street

Newark, N. J.

July 8, 1947

One of New Jersey's important industries is the bottling of carbonated beverages. Over 200 bottling plants, located in the various parts of New Jersey, employ many thousands of people and contribute materially to the economic welfare of New Jersey. As an important industry we are likewise users of New Jersey's highway system. For this service we pay substantial sums in gasoline taxes and license fees to the State. We pay these taxes in addition to all other taxes assessed for the general cost of government.

As highway users we have always believed that the special highway user taxes should be used to build and maintain our highway system. Transportation costs by motor truck of raw materials into our bottling plants and the delivery of the finished product, also by motor truck, vitally affect our cost of doing business. Delays caused by traffic tie-ups cost money, and it is our belief that past diversions of highway funds have prevented the elimination of many of our traffic bottlenecks.

In the interest of good business, we feel that special highway user taxes should be safeguarded by a constitutional provision, and we sincerely hope that the Constitutional Convention will submit this question to the people of New Jersey for their decision.

Yours very truly,

THOMAS F. MANSFIELD, *President*

RECOMMENDATIONS OF THE NEW JERSEY STATE CHAMBER OF COMMERCE

* * * *

COMMITTEE ON TAXATION AND FINANCE

It is the position of the State Chamber that the present constitutional provision on taxation should be retained. This clause reads as follows: "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." (*Art. IV, Sec. VII, par. 12*)

The Chamber also takes the position that no tax exemption for any special class should be provided for in the Constitution. Such questions should be left for legislative determination. The question of dedicated funds should also be left for legislative determination, and no provision related thereto should, in the opinion of the Chamber, be included in the Constitution.

RECOMMENDATIONS OF THE NEW JERSEY STATE FEDERATION OF LABOR

* * * *

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, of 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.

RECOMMENDATIONS OF THE NEW JERSEY STATE INDUSTRIAL UNION COUNCIL, C.I.O.

* * * *

- E. Provide for executive budget and limit the power of the Legislature to increase or add to budget estimates or enact supplemental appropriations. Require a consolidated state fund and single fiscal year. (Not to include local taxes which are state-collected.)

* * * *

- D. Limit power of Legislature to enact:
(1) Tax exemption laws.

* * * *

- 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" requirement and recognizing classification of property.

MEMORANDUM OF NEW JERSEY TAXPAYERS ASSOCIATION

414-417 Broad St. Bank Bldg.
Trenton 8, New Jersey

August 19, 1947

To the Delegates to the Constitution Convention:

The New Jersey Taxpayers Association respectfully submits to the earnest consideration of the delegates to the Constitution Convention the attached proposals of the Association on the subjects of a tax clause and tax exemptions.

Sincerely yours,

A. R. EVERSON,
Executive Vice President

TAX CLAUSE

Section I, paragraph 1 of the proposal of the Committee on Taxation and Finance providing a tax clause in the Constitution, is as follows:

"Property shall be assessed for taxes under general laws and by uniform rules, according to true value."

The New Jersey Taxpayers Association urges removal of the hypocrisy and illegality of present assessing practices which are fostered by this obsolete and unworkable provision of our antiquated Constitution which the Committee now proposes to re-establish by the above proposal. Instead the Association supports the following tax clause proposal:

"Property shall be assessed for taxes under general taxation laws and by uniform rules, according to classifications and standards of value to be established by law. Assessments when made on an *ad valorem* basis shall not exceed the true value of the property assessed."

This proposal provides the means by which the Legislature, through creation of proper classification and the establishment of standards of value for each classification, can set up a fair, just and honestly realistic system of taxation.

TAX EXEMPTION

The New Jersey Taxpayers Association in a presentation before the Constitution Convention's Committee on Taxation and Finance on July 15, 1947, made the following proposal for a tax exemption clause in the State Constitution:

"Exemptions from taxation may be granted only under general laws and by uniform rules approved by a two-thirds vote of both houses of the Legislature."

The Committee on Taxation and Finance in its final report

recommended as a part of Section I, relative to tax exemptions, the following proposal:

"Exemptions from taxation may be granted only by general laws. Exemptions from taxation validly granted and now in existence shall be continued but such exemptions may be altered or repealed by the Legislature, except that the exemption from taxation of real and personal property used exclusively for religious, educational, charitable or cemetery purposes and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and operated not for profit shall not be altered or repealed by the Legislature."

While feeling that a more restrictive provision is needed to curtail the vast extent of tax exemptions in this State, the Association does not oppose the part of the Committee's recommendation quoted above.

We do, however, find inconsistent and objectionable the remainder of the Committee's Section I proposal, which reads as follows:

"Any person who has been, is, shall be, or shall have been in active service in any branch of the Armed Forces of the United States in time of war, who is a citizen and resident of this State and was honorably discharged or released under honorable circumstances from such service, shall be exempt from taxation in real and personal property to an aggregate assessed valuation not exceeding \$500 and any such person as herein before described who has been declared or shall be declared by the United States Veterans' Administration or its successor to have a service connected disability, and the widows during their widowhood of such hereinbefore described persons who died on active duty shall be entitled to such further exemption from taxation as the Legislature may from time to time prescribe."

We believe it objectionable to establish by constitutional enactment tax exemptions in a fixed amount for veterans and to leave to the Legislature the power to fix the amount of exemptions for disabled veterans and widows of veterans who died on active duty. Such glaring inconsistency should not form a part of the State's fundamental law.

The Committee's proposal to grant tax exemption to any person who "*shall be * * * in active service * * * in time of war*" projects veterans' tax exemptions into the unforeseeable and unpredictable future. No such mandatory provision should be blindly incorporated in the State's fundamental law.

In dealing with the tax exemption problem, the Convention should give particular attention to the oppressive burden of wholesale tax exemptions in New Jersey which each year heavily penalize the taxpayers. In 1947, tax exemptions in this State total \$1,314,936,039, and comprise 19.8 per cent or nearly one-fifth of the valuation of all property in New Jersey.

The taxpayers of every county in the State are heavily penalized by the tremendous burden of tax exempt property within their county limits. The attached table provides a county-by-county picture of the enormity of tax exemptions prevalent throughout the State in 1947.

Delegates to the Constitution Convention can well apprehend from this table how the tax exemption evil strikes home.

Property taken off tax rolls by exemptions constitutes a tax on the losing taxing district because a right to an amount of revenue is surrendered. The burden for non-taxed property is therefore borne as an excess load by the remaining taxpayers.

One of the most important tasks before the Constitution Convention from the viewpoint of taxpayer relief is to block the loopholes through which a great amount of evaluated property in this State escapes taxation as a result of loose control of tax exemptions.

COMPARATIVE TABLE
SHOWING TOTAL TAXABLE VALUATIONS AND PROPERTY EXEMPTIONS
IN EACH OF NEW JERSEY'S COUNTIES IN 1947

County	Net Valuation Taxable	Total Amount Exempt Property	% Exempt
Atlantic	\$ 132,557,349	\$ 20,439,244	13.4
Bergen	488,277,561	78,183,220	13.8
Burlington	62,005,928	27,356,535	30.6
Camden	254,410,974	60,816,360	19.3
Cape May	53,211,745	12,013,031	18.4
Cumberland	55,259,230	14,937,217	21.3
Essex	1,392,842,452	288,002,811	17.1
Gloucester	57,263,168	7,876,005	12.1
Hudson	866,603,170	280,391,890	24.4
Hunterdon	35,170,686	6,587,564	15.8
Mercer	252,171,906	95,934,340	27.6
Middlesex	211,229,840	123,564,252	36.9
Monmouth	185,777,357	44,660,662	19.4
Morris	128,987,420	68,279,764	34.6
Ocean	50,299,028	8,364,877	14.3
Passaic	398,507,642	78,591,583	16.5
Salem	50,086,759	3,247,521	6.1
Somerset	71,961,242	19,943,487	21.7
Sussex	31,063,364	2,747,305	8.1
Union	516,207,216	66,590,381	11.4
Warren	40,665,201	6,407,990	13.6
	<u>\$5,334,559,238</u>	<u>\$1,314,936,039</u>	<u>19.8</u>

A 20th CENTURY STATE WITH A 19th CENTURY TAX SYSTEM

An analysis of the obsolete tax clause in New Jersey's Constitution
with a program for its improvement

For many years the realtors of New Jersey have deplored the presence in our State Constitution of so rigidly inflexible a basis for taxation as the requirement that assessment of real and personal property be made at true value.

This one-track yardstick, while undoubtedly appropriate to the agrarian 19th Century economy that existed in New Jersey when it was adopted, long ago outlived its usefulness. In this 20th Century it is a deterrent to the growth and development of our State and its communities.

An outspoken advocate for modernization of this archaic tax provision has been realtor John F. O'Brien, who also is a municipal assessor. Whenever the question of revising the Constitution has arisen, John O'Brien has been in the forefront, emphasizing the need for changing the tax clause, in his capacity of taxation spokesman for the New Jersey Association of Real Estate Boards.

The present Constitutional Convention has found Mr. O'Brien active in behalf of a realtor-sponsored proposal that would eliminate the antiquated true value fetish from our basic law. He has appeared before the Convention's Committee on Taxation and Finance, as also has realtor Ormonde A. Kieb, immediate past president of our organization and chairman of our Trenton Committee.

In support of their appearances, and to present the position of the Association in pamphlet form for the consideration of the Convention delegates and others, the following statement has been prepared. It represents the considered judgment of the State's realtors from the background of years of intimate observation and experience in the transfer and management of property.

HENRY N. STAM,

President, New Jersey Association of Real Estate Boards

OUR STATE,—AND ITS TAX ON PROPERTY

Buried in the research records of the U. S. Department of Commerce's Bureau of the Census are two analytical studies that merit the serious consideration of New Jersey's Constitutional Convention, and at the same time present a compelling challenge to it. Summarized, they add up to these startling and rather disturbing revelations:

1. While less than 60 percent of all revenues raised to finance municipal government in the United States come from property taxes, **THE AVERAGE IN NEW JERSEY EXCEEDS 80 PERCENT.**

2. While the nation-wide average property tax on a per capita basis is \$40, **THE AVERAGE IN THIS STATE IS \$80 PER PERSON.** *And in some of our largest cities the national average is more than doubled: Newark, for example, with \$92, and Jersey City, with \$109.*

The implications of such a situation are obvious, and they're

serious. Admittedly it's not a prideful state of affairs; not the sort of thing a State would feature in any promotion campaign designed to attract new residents.

The New Jersey Association of Real Estate Boards realizes that, and is calling attention to it now only because the condition is susceptible to effective remedy, *and because the opportunity is at hand to remedy it.*

The 81 delegates meeting in New Brunswick have it in their power to initiate remedial treatment that, we are confident, would be welcomed by the people of our State when the proposed new Constitution is submitted to referendum in November.

So far, prospects for favorable action are not encouraging. The Committee on Taxation and Finance twice has voted down a proposal that would bring our State in line with the rest of the nation. The proposal, sponsored by this organization, is not offered as a cure-all nor is it contended that it represents the only possible solution, but it is a definite step in the right direction; a concrete, basic proposition that is sure to work because it strikes at the heart of the problem—those deceptively harmless-sounding words: *"Property shall be assessed for taxes . . . according to its true value."*

The realtors of New Jersey are hopeful that an improved tax clause yet will come out of the Convention, one that strikes out the obsolete reference to true value and replaces it with a constitutional foundation at once modern and pliable enough to permit legislative change from time to time as progress may require. For it is precisely changing conditions that have outmoded the present provision, which was written for an agricultural economy when the principal form of wealth was in tangible property. (*In 1844, when the Constitution was written, 89 percent of the state was rural; today the ratio is reversed and nearly 89 percent of the population is urban*).

We think that, notwithstanding the action of the Taxation Committee, the preponderance of opinion at New Brunswick favors some change in the tax clause similar to the proposal advanced by this Association. Governor Driscoll and all of the State's recent Chief Executives have approved it; the State's fiscal officers led by Commissioner Zink have endorsed it; Dr. Sly's Tax Policy Commission favors it; many delegates from both parties have spoken out in advocacy of it, among them the Democratic legislative leader, Senator Morrissey; the Committee for Constitutional Revision, with its 11 diverse state-wide organizations (*ranging from the CIO and the State Federation of Labor to the Federation of Women's Clubs*) in unanimous accord, urges its incorporation into the Constitution draft.

This paper has been prepared for the purpose of presenting to the

delegates and others interested in the subject of property taxation, for their consideration, the collective observations and viewpoints of New Jersey's 1,600 realtors whose business and profession is the management, sale, appraisal and financing of property.

THE PROPOSAL

The provision having to do with the assessment of property for taxation (Article IV, Section VII, paragraph 12 of the present Constitution) says merely:

Property shall be assessed for taxes under general laws, and by uniform rules, *according to its true value.* (*Italics ours*).

We recommend in substitution therefore the following language, representing the best judgment of students of taxation who have spent years in study of the problem:

Property shall be assessed for taxes under general laws, and by uniform rules, *according to classifications and standards of value to be established by law.*

In creating such classifications and establishing the standards of value for each, the Legislature will give due consideration to *the type of property, its earning capacity, the public service it receives and its relationship to the welfare and stability of the State and its subdivisions.*

Assessments where made on an *ad valorem* basis shall *not exceed* the true value of the property assessed.

Exemptions from taxation may be granted only by the affirmative vote of two-thirds of the membership of each house of the Legislature.

Thus the proposal is a three-fold one: (a) that property be assessed according to classifications and standards of value to be established by law, instead of by "true value"; (b) that assessments based on capital value shall not exceed the true value of the property assessed; and (c) that more care be exercised over the increasingly serious matter of tax exemption.

It is not our contention that this proposal constitutes a magic formula whose adoption automatically will solve all the varied and complex problems of property taxation. *But it is our feeling that once the rigid, inflexible "true value" straitjacket has been removed, the problem can be approached constructively, uninhibited by any tenacious clinging to an outmoded and oppressive dead-weight handed down from an earlier century.*

Without the hampering influence of a constitutional provision which time, practice and experience have proven to be obsolete, impractical and largely unenforceable, the Legislature will be able to provide a tax administration best suited to present day needs, *based on equity and ability to pay.*

Dr. Sly, perhaps the State's outstanding authority on taxation by virtue of his leadership of the Princeton Surveys, has countered arguments that the proposal is not specific enough, since it deals with broad principles and does not spell out a detailed plan, with the succinct promise: *"Get rid of the true value clause and we'll*

produce a workable plan." The same assurance has been given by Governor Driscoll and Finance Commissioner Zink.

As a matter of fact, the Constitution hardly seems the appropriate place for any detailed formula. *The basic law should deal with principles, and should necessarily be flexible.*

We question seriously the wisdom of attempting to incorporate into the Constitution a sweeping program of tax reform. But within the bounds of current realities and foreseeable trends, a start can be made toward modernizing our archaic tax structure while setting up the framework within which future changes can be made by legislative action. This, it should be recalled, was the aim of the Legislature which prepared the revised Constitution in 1944, including in it a tax clause very similar to the one now proposed, particularly with reference to the elimination of the overriding emphasis on true value.

WHY ARE WE AS REALTORS SO CONCERNED WITH THIS PROBLEM?

The delegates may reasonably ask why we, as a trade organization, have taken the initiative in urging a change in the tax clause and why we feel we are qualified to speak on the subject.

Well, our practical experience in the field of real property taxation is considerable and of long standing. Our work as real estate brokers, managing agents, mortgage representatives, appraisers and developers bring us into close contact constantly with the principal taxpayers of this State—*the owners of real estate.*

By the very nature of our business we are community builders and developers. We sell land, develop, build, finance, sell and rent homes. We bring industry and business into the State. We are in the forefront of every community planning and building movement. *Our practical and first-hand knowledge of the effect of taxation on property manifestly is neither indirect nor incidental.*

WHAT HAS BEEN OUR EXPERIENCE WITH THE EXISTING METHOD OF TAXATION?

The activity and close personal observation of New Jersey's realtors over the years convince us that there is no part of the State's century-old Constitution more antiquated and in need of modernization than the tax clause.

We have found in our business that the constitutional insistence upon true value as THE base for taxation, designed to meet conditions of an earlier century, long ago became oppressive and even confiscatory. *And we have found that the heavy tax burden upon real property has been a brake to the growth and development of our State.*

The relative dependence of local government in New Jersey upon real estate as compared with other states definitely operates to the

disadvantage of our property owners and to our efforts, as realtors, to attract new industry, new business and more residents here.

The tax emphasis on capital value likewise acts as a deterrent to improvements. *In effect it penalizes superior housing and too often serves to perpetuate and aggravate sub-standardization.*

We have argued for years that the annual assessment of property on its capital value without regard to type, earning capacity, services required, or ability to pay was a *bad system of taxation and injurious to home ownership and real estate generally.*

Discriminatory practices flourish under this system—indeed are well-nigh unavoidable—and add up to an utter lack of equalization not only between taxing districts but between individual properties in the same taxing district. Low assessment ratio districts adjoin high assessment districts; municipalities compete to shunt more of the county tax apportionment off upon each other; preferential treatment, for political or other reasons, is not uncommon; taxes are exacted with no great degree of uniformity and without regard at all to the owner's equity in the property assessed.

The constitutional mandate is ignored consciously as well as inadvertently, its demand for true value circumvented deliberately in many instances, *and the Legislature is no less guilty than local assessors in employing such subterfuges as percentage valuations.*

In its administration of the tax laws the Legislature has recognized the weakness of the *ad valorem* system of taxation—a tax on the capital value of property at unlimited rates—and has removed from its application practically all types of intangible personal property and many kinds of tangible personalty. *It is the preferential treatment accorded this form of wealth, incidentally, which constitutes one of the main causes of the high real estate taxes imposed in this State although, ironically enough, personal wealth represents more than three times the total value of all real property in the State.*

What personalty is left for taxation at local level rarely is assessed because of the obvious absurdity of imposing a five or six percent rate (and some go up to ten and even higher) upon the capital value—the *Constitution's true value*—of holdings that yield only two or three percent or perhaps nothing at all. *Consequently the effect of the unreasonable true value mandate is to make assessors automatically violators of the Constitution, and to exempt from taxation a large tax potential of personalty.*

In its efforts over the years to ameliorate this condition, the Legislature has introduced the principle of classification. But recently it has gone beyond personalty and has sought to nullify the true value requirements on railroad property by setting up an arbitrary tax rate without regard to local rates or a state-wide average. This move to exclude certain classes of real property from

the full effect of the mischievous clause has given rise to bitter criticism and to an understandable demand for an "equal burden" safeguard. *At the same time, it emphasizes the unfairness of the present constitutional clause.*

In actual practice, the administration of our tax system has become a sword of Damocles descending closer and closer to the heads of small property owners. The practical application of the true value clause has narrowed almost exclusively to real property, notably the homes of our people. The method of assessing that property at ever-increasing high local rates, upon which there is no limit whatsoever, has had a serious effect on the private ownership of real estate.

As a result, real estate bears 80 percent of the local tax burden in New Jersey, and property often is taxed out of all proportion to its worth. Inevitably, then, when prosperity ebbs, first to suffer is the homeowner through the cruel cycle still remembered so tragically from the '30s—interest and penalties on delinquent taxes . . . tax sale . . . title lien . . . foreclosure of certificate . . . loss of the home.

It may have been reasonable and logical in the 19th Century to regard the real estate tax primarily as a tax on wealth, since real property—land and buildings—then represented practically the only form of wealth, but the revolutionary changes that have come with the industrialized and motorized age have reversed the process. *Today title to real estate is far from a sign of affluence, particularly with mortgage financing almost universal.*

We have sought to show, as we have learned from experience, that there can be no equity in New Jersey's system of taxation so long as the Constitution contains the requirement that assessments be made at true value. Those two words are the nub of the problem. Yet they could not be more indefinite if they were Sanskrit!

"TRUE VALUE"—WHAT IS IT?

To the uninitiated, the expression "true value" may seem in-offensive enough. The policy of basing taxation upon full value, that is, actual worth, sounds logical and fair enough, until one ponders the question: "*What is true value?*" and studies the devastating influence it has exerted on property ownership in actual practice.

Precisely what does "true value" mean?

Does it mean bricks and mortar—reproduction costs? *No*, say many experts. *Cost is not value for an income-producing property.*

Does it mean the capacity to produce income, then? *Not solely; certainly not for specialty properties that are occupied and used by the owner* (the majority of New Jersey homes are owner-occupied and so produce no income at all).

Does it mean market value, the price which a willing buyer will

pay and a willing seller will accept? One need only point to today's inflated market, *with the shortage of supply in relation to demand and the premium purchasers are willing to pay for possession*, to reply with an emphatic *no*. Anyone aware of the vagaries, necessities and whims which motivate buyers and sellers will agree that price is not necessarily value, not even in normal times.

What, then, is "true value"?

Well, as a matter of fact, there is no hard and fast interpretation of it. It is a chimera, an illusion. Always it has been an issue of controversy, even among valuation experts—trained appraisers and assessors. *And it has been the subject of 50 years of litigation before the courts, producing conflicting judicial interpretations of its meaning.*

No such history of confusion, uncertainty and litigation has been built up by the other taxes levied in this State. Gross receipts taxes are self-definitive by their title: they are levied on a clear-cut, tangible formula, not prey to inequitable and even whimsical application. Franchise, gasoline, inheritance, bank stock, excise taxes, all are assessed by arithmetic, under specific rules, giving consideration to the ability of the taxpayer to meet the resultant levy.

Only real property is denied such tax logic.

Contrasted with the other taxes, the property levy, with its base the capital value of property as such, subject to change periodically, requires 565 local assessing offices, *the vast majority poorly equipped with tools to do the job*, to determine the true value of each individual property in their respective districts on a statutory date (itself an absurdly impossible requirement; *theoretically every piece of real estate and tangible personalty is inspected and valued on one and the same day—October 1*).

Required also are 21 county boards of taxation sitting as appellate tribunals to pass upon the opinions of the municipal assessors; a State Division of Tax Appeals to weigh decisions of the county boards, and behind them all the judicial system which for 50 years has been trying to reconcile the whole chaotic picture with a basic foundation that is inherently unsound, and so impossible of reconciliation. *Is it any wonder litigation goes on, and will continue to go on so long as judgment, opinion and guesswork dominate the local assessing process and all appeals from that process?*

WHAT HAS "TRUE VALUE" DONE TO NEW JERSEY?

New Jersey's unenviable distinction of relying more heavily upon property taxes than any other state, translated into simple arithmetic, means:

1. Property taxes this year have reached the astronomical total of \$297,697,896, *an all-time record even though railroad taxes are excluded from the figure.*

2. The average property tax rate, also a high, is \$5.65 for each \$100 of assessed valuation, again with railroad taxes excluded.

With full value as the legal base for general property taxes, the implications are that real estate and tangible personalty in New Jersey are taxed *or taxable* at 5.65 percent of full value at a time when earnings at such rates are rare indeed. *If this is not dangerously close to confiscation, what is?*

Nor is it any mitigation to say that the constitutional directive is not generally followed; such an argument emphasizes the fundamental weakness of the whole system and focuses attention upon the inequities that abound under it. *Indeed, it presents a cogent and persuasive reason for changing the whole set-up.*

There seems no reason to waste time or space in presentation of evidence to prove the lack of equality under the present method of taxing property. Absence of uniformity and standardization in assessments is notorious.

The very existence of such conditions is not inclined to engineer respect for authority or confidence in law. *To fail to correct them now is to subject a new Constitution to immediate disrespect that is bound to weaken public confidence in the fundamental law of the State.*

WHAT CAN WE EXPECT FROM THE FUTURE UNDER "TRUE VALUE?"

Retention of the true value clause can only mean an increasingly insupportable burden on real estate in New Jersey.

We have shown how the property tax this year approaches \$300,000,000, the highest on record. Just how high is dramatized by the following facts:

1. The 1947 tax represents a rise of \$30,846,495 over last year, **THE LARGEST INCREASE IN ANY ONE YEAR IN OUR HISTORY.** The percentage of increase from 1946 to 1947 also is a record-breaker—11½ percent.

2. The average 1947 municipal tax rate of \$5.65 is 54 points above last year's average of \$5.11.

3. The soaring rate came in the face of a boost of \$158,000,000 in assessed valuations taxable, now up to \$5,335,000,000.

The significance of this comparative study is the trend it indicates. Government costs are rising steadily and, apparently, inevitably; *and just as inevitably the impact will be felt by real property, unless the present system is changed.*

For the property owner, particularly the home owner, is the "fall guy," the glutton for punishment upon whose back every additional tax dollar is loaded. *His role is that of a taxation catch-all.* Does the municipal budget go up \$100,000? *Add it to the amount to be raised by property taxation.*

Business and corporation taxes are determined on the basis of revenues or other definite yardsticks, and whatever remains to meet the budgetary appropriations that support government is billed to him, *since he alone is, alas, tax-elastic*. There is no ceiling on his rate and no limitation on his bill.

But certainly there must be a limit on his endurance and capacity to pay. *How can property taxes continue to rise without serious effect on owners?* And yet under existing conditions further increases are as certain as taxes themselves.

Consider any municipality with which you are familiar. It always has depended upon the local property tax for the major part of its funds. But it faces serious financial problems. Local governments are beset by vast postwar capital needs and higher costs for current operations due to the rise in the entire price structure. It is unthinkable that these new and added responsibilities should be met by reliance upon real estate. *New Jersey cannot afford 11½ percent increases in property taxation year after year.*

Yet where else can municipal officials turn under the present system?

It becomes abundantly clear that the time has come to revise the taxation system before the back of real estate is broken in New Jersey. The present method does not reach all resources of the State, nor does it reflect an accurate measure of comparative financial capacity among resources which it does reach. Such inequity is indefensible in a diversified industrial State like New Jersey.

Continuance of our present constitutional tax clause implies that our municipalities face the task of providing the broad range of public services required in a progressive, industrial State and financing them from a heavily burdened general property tax base. In this sense they are in the position of superimposing metropolitan services upon a rural tax base, since it was for an agrarian economy that the present system was devised.

WHAT CAN BE DONE TO MEET THIS THREAT TO PROPERTY OWNERSHIP?

The Legislature has given tacit recognition to the inadequacies of the present constitutional clause on taxation by removing from its application several forms of personal property and providing for them an assessment based on something else than the capital value of the property itself. *This principle should be extended to cover all property and given formalized status.*

Officials at every level of government for years have been urging the necessity of equalizing assessments and, in general, of attaining equitable distribution of the tax burden.

In 1945 the Legislature created the State Tax Policy Commission as a permanent agency, and in the law establishing the commission

charged it to "engage in continuous study of the state and local tax structure and related fiscal problems, with particular attention to (a) *all laws relating to the assessment and collection of taxes in this State*; and (b) *all proposals for change in such laws*. * * *

The statute went on to say that the commission "shall determine the respects in which the existing tax laws *may be simplified, modified, rearranged, consolidated and revised*, to insure greater efficiency in the assessment and collection of all taxes."

In its very first report that commission asserted—and reiterated in its second report—what we long have contended:

"New Jersey is a great industrial State but its densely populated areas still are attempting to finance their municipal services as if they were agrarian communities. *Their real wealth lies in business activity, not in real estate*, and the commission's proposal suggests the establishment of a modest activity base."

Columbia University's eminent Dr. Seligman, one of the country's outstanding economists and tax experts, was quoted:

"The general property tax, as actually administered, is one of the worst taxes known to the civilized world. *It is so flagrantly inequitable that its retention can be explained only through ignorance or inertia*."

It seems unthinkable that serious thought could be given to carrying into any new Constitution, *one intended to reflect the advances made in a century of progress*, a provision that long ago outlived its usefulness, as has our present tax clause. Such action would be giving the stamp of approval to an assessment method that has produced the heaviest burden on home ownership in the entire nation.

Today the end result of New Jersey's local finance is a tax burden for some and a virtual haven from taxation for others. Dr. Sly's commission now is studying this problem, and it is essential to the success of their efforts that a realistic tax clause supplant the punitive fetish of "true value."

Dr. Sly has pledged that his commission will present an equitable tax program if released from the "true value" shackles. He expresses the hope, with us, that that troublesome string attached to the law creating his agency will be removed. It is clearly self-defeating for a new Constitution to say to the commission and to the Legislature: *You have complete freedom to do anything you wish with respect to improving the assessment machinery in this state*, BUT—

The true value provision is sacrosanct. The present method of assessing real property must remain as it is. The one limitation we place upon you is that you shall provide no other method of assessment than upon capital value.

A mid-20th Century constitution that insists upon retaining so palpably reactionary a throwback to the 19th Century hardly can be said to merit progressive support. *There is no provision in the entire*

present basic law more in need of modernization than the tax clause.

The present penalty on home ownership must be removed. The people who own New Jersey's real estate must be rescued from the category of a tax catch-all. Not only is \$8 of every \$10 available for local services in the municipalities of our State extracted from real estate, but that 80 percent represents staggering sums of money. *And the condition is worsening year by year; confiscation looms over the horizon.*

If our suggestion prevails and the Constitution is adopted by the people, we foresee for the future a taxation system under which private homes, apartment buildings, mercantile properties, industrial real estate, will be classified for purposes of assessment in a way that will pay more attention to equity and ability to pay than in the number of bricks or the quantity of lumber used to put the building together.

Indeed, if home ownership is to be encouraged in our State; if new residents and new business and new industry are to be attracted here, there must be reason and logic in our taxing system.

True enough, the path to tax relief for property is one the Legislature must pursue. *But it is the responsibility of the Constitutional Convention to remove the barriers that prevent the Legislature from doing its job.*

By the adoption of a flexible clause providing for classification and standards of value, this Convention can make a valuable contribution toward the achievement of honest equality of taxation.

COMMITTEE
ON SUBMISSION
AND ADDRESS
TO THE
PEOPLE
RECORD
OF
PROCEEDINGS

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON SUBMISSION
AND ADDRESS TO THE PEOPLE

Monday, August 11, 1947

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

PRESENT: Cafiero, Lloyd, Montgomery, Moroney, Murphy, Paul and Saunders.

Chairman Wilbour E. Saunders presided.

(The session was already in progress when the stenographer arrived¹)

MR. WALTER D. VAN RIPER: Senator, you and I are in perfect agreement. We could have a complete Constitution without amending things which may be in the present one. But now, wouldn't you be submitting, first of all, a consummated document, a Constitution as a whole?

MR. EDWARD J. O'MARA: I don't think so, if it were clearly the intention of the Convention—what we will call “the main proposition” for the purpose of clarity—if the Convention made it clear that what they were submitting was not a complete Constitution, but it was a complete Constitution, if you will, less a clause dealing with taxing and a clause dealing with gambling. In other words, it is the desire of the Convention that whatever Constitution is adopted by the people should contain one or another clause on taxation, and one or another clause on gambling, so that it is not a complete Constitution that the Convention is presenting to the people.

MR. VAN RIPER: Let's stop right there. This is a document which you say covers a lot of subjects but is not a complete Constitution.

MR. O'MARA: Right.

MR. VAN RIPER: Let's forget any alternatives to that. If that document is adopted by a majority vote of the people, what happens to it? Does that then become the Constitution of the State, or does that go into the present Constitution?

MR. O'MARA: It becomes the Constitution of the State, but it does not have to be adopted in that form without the other proposition. In other words, it is the ruling of the Convention that we submit a Constitution to the people for adoption or for rejection,

¹ Others present during the session were Attorney-General Walter D. Van Riper and Delegates David Van Alstyne, Jr., Robert C. Clothier, Frank H. Eggers, Nathan L. Jacobs, Wayne D. McMurray, Edward J. O'Mara and Frank H. Sommer.

but that is not a complete Constitution. The action of this Convention is that when that proposed Constitution is adopted, it must be supplemented by a taxing clause, either "A" or "B," or an anti-gambling clause, either "A" or "B." Why is not that the submission of a part of the Constitution plus alternatives?

MR. VAN RIPER: I think probably it is a part of a Constitution. I thought that you were arguing it was a complete Constitution. Am I not right in this—don't you contend that if that were adopted—the document which you say is not complete because there are two subjects missing—if that Constitution were adopted without those two subjects, what would happen?

MR. O'MARA: It couldn't be adopted without those subjects.

MR. VAN RIPER: Do you mean to say you would submit a practically completed document?

MR. O'MARA: Yes.

MR. VAN RIPER: Then have two subject matters and say, "This document cannot be adopted unless you adopt these two."

MR. O'MARA: Either one of the two is going to be adopted. They are both going to be put on the bill at the same time.

MR. VAN RIPER: You don't say they will be adopted?

MR. O'MARA: One or the other has to be adopted.

MR. VAN RIPER: Can't they both be rejected? Under the statute aren't the people entitled to reject both of these?

MR. O'MARA: Not if the Convention so orders.

MR. VAN RIPER: What would you call them, Senator—alternatives?

MR. O'MARA: Yes.

MR. VAN RIPER: What about the language of the act which says the people may adopt or reject any or all of the alternatives?

MR. O'MARA: That, in my judgment, refers to a situation which the Convention has under control. In other words, if it is the will of the Convention that the completed Constitution must contain either one or the other alternative, that language provides for the submission of the question in that form.

MR. VAN RIPER: Would it be the will of the Convention that the Constitution must contain one of these alternatives, even if the people did not want it to contain it?

MR. O'MARA: How could it be anything else if the Convention decided it that way?

MR. VAN RIPER: Do you mean to say that the Convention would say: "We are going to give you a chance to vote on one of these two things, but one you have to put in?"

MR. O'MARA: Right.

MR. FRANK H. SOMMER: Suppose there were three?

MR. VAN RIPER: What choice would the people have?

MR. O'MARA: Either one or the other. Suppose there were no alternative, and they wrote in one clause, the tax clause, in the Constitution. What choice have the people then?

MR. VAN RIPER: They have to take it or leave it.

MR. O'MARA: That's right.

MR. VAN RIPER: It seems to be a brand new thing, which certainly does not affect the validity of it. We are proposing that this main body of the work depends for its adoption upon one of two alternatives.

MR. O'MARA: Not quite. I say that the main body of the proposed Constitution shall be submitted for acceptance or rejection. However, on acceptance, that is not a complete Constitution, and the referendum is framed in such a way that either one or the other of the alternatives must be added to that Constitution.

MR. FRANCIS V. D. LLOYD: In other words, if we vote "yes" for the main question, then you must go down and vote for the alternative?

MR. O'MARA: You don't have to, but the one which receives the greater number of votes, that alternative is put in the Constitution.

MR. VAN RIPER: You mean the greater number of affirmative votes.

MR. O'MARA: Right, the greater number of those voting on that proposition.

MR. VAN RIPER: They would vote on that proposition "yes" or "no."

MR. O'MARA: It depends on the way it is submitted. You could have it framed: "Which proposal do you prefer? 'A' or 'B'?" It would depend on whether "A" got the greater number of votes or "B" got the greater number. "A" or "B" would be inserted in the main Constitution.

MR. VAN RIPER: Getting back to the main document, doesn't it either have to be one or another? Doesn't it either have to be the Constitution or a part?

MR. O'MARA: I would say yes.

MR. VAN RIPER: We are agreed on that.

MR. O'MARA: Right.

MR. VAN RIPER: You say in itself it is not a Constitution, this completed document you have?

MR. O'MARA: No.

MR. VAN RIPER: When you say complete, don't you mean it is not a Constitution? It either is or is not.

MR. O'MARA: It is a 90 per cent Constitution.

MR. VAN RIPER: Be it that way. Neither one of us wants to split hairs; I know that. The act talks about a Constitution as a

whole or in part. Now, is it a Constitution as a whole?

MR. O'MARA: Not if something is left out.

MR. VAN RIPER: Then it is not a Constitution as a whole?

MR. O'MARA: Right.

MR. VAN RIPER: And you are not submitting it so it will be a Constitution as a whole?

MR. O'MARA: Right. You are submitting it as part of a Constitution.

MR. VAN RIPER: As part of a Constitution you are going to put together on election day?

MR. O'MARA: Right.

MR. VAN RIPER: Not as part of the present Constitution?

MR. O'MARA: That's right.

MR. VAN RIPER: Don't you think that the act, when it talks about parts which, if adopted, will become a part of the present Constitution—

MR. O'MARA: I don't think it is limited to that, Mr. Attorney-General.

MR. VAN RIPER: What does it mean in section 28 (*reading*):

"But if one or more parts have been adopted, then it shall become part of the Constitution of the State as so revised."

MR. O'MARA: That might be so.

MR. VAN RIPER: Isn't that the answer to it?

MR. O'MARA: I don't think it is completely. It seems to me that you can frame this proposition so that you may offer an incomplete Constitution plus alternatives. Now, what is the alternative to that proposition? If you submit a complete Constitution, you may not offer alternatives to it.

MR. VAN RIPER: That is my view.

MR. O'MARA: And if you have only submitted a Constitution in part which must become a part of the present Constitution, then only may you submit alternatives to it.

MR. VAN RIPER: That is my view.

MR. O'MARA: It was never the intention of the Legislature. I am certain of that.

MR. VAN RIPER: Isn't that the language of it? Now, you must remember they did not use the language here that they had in New York State. In New York State they did not talk about Constitution as a whole or in part. They said: "In whatever manner they desire to submit it." I wonder if we can reach the same thing. I don't think you and I are too far apart on objective. If we submit as a block, that thing you are talking about, instead of calling it a Constitution, call it a part to take the place of Articles I to VIII, or V to VII, or anything you want in the present Constitution; then I think we are getting somewhere.

MR. O'MARA: That's right, I have no quarrel with that.

MR. VAN RIPER: As a matter of fact, there is no definition, as you well know, in the act as to what "a part" is. There is a definition of "alternative," but no definition of "part."

MR. O'MARA: Right.

MR. VAN RIPER: It speaks of the Constitution as a whole, and it speaks of it as a part. Now, it is my judgment that this Convention, so long as it has—and I assume it would have—due regard for the niceties of things in preparation of the Constitution, could say or put into there anything it wanted to and call it a part, provided it logically fits in the present Constitution, if it were adopted.

MR. O'MARA: Suppose it would supersede the present Constitution?

MR. VAN RIPER: Any part you adopt would supersede the present Constitution.

MR. O'MARA: So you would have a new Judicial Article, a new Legislative Article, a new Executive Article—all would fit into what was left of the old Constitution.

MR. VAN RIPER: Not much.

MR. O'MARA: The Preamble, maybe.

MR. VAN RIPER: There wouldn't be much left.

MR. O'MARA: We have reached the same result. The only thing I want clear, Mr. Attorney-General, is this: That if in the judgment of the Convention there ought to be submitted an alternative proposition to the people on one or two or maybe more Articles that provoke, that seem to excite, a great deal of public interest, it was the evident intention of the Legislature that they might be submitted to the people so it would not make it necessary for the people to reject the entire Constitution, but they could take the Constitution and vote for the controversial Article which they prefer. All I want to say is that if it is the will of the Convention that one or more propositions should be submitted in the alternative, a way can be devised within the framework of this bill that that result can be accomplished. I think what you have suggested could perhaps do it.

MR. VAN RIPER: I don't think we would have to deviate any from the definition of "part" we gave here, in which we say "section, share, or portion of the Constitution." A section, share, or portion can be small or large.

MR. O'MARA: That's right.

MR. VAN RIPER: As I said to the Committee this morning, the entire Judicial Article could be a "part," or I think we could take one line in Article VII, the amending clause—anything that within itself makes sense by itself.

CHAIRMAN WILBOUR E. SAUNDERS: I think that is entirely satisfactory to us, but I think my Committee will substantiate

me in saying that in our previous meeting with you, you did not feel we could do that.¹

MR. VAN RIPER: I did not feel that we could take the complete Constitution. I think Dr. Clothier raised the question when we were talking about taking all the Constitution except one controversial feature, and have that submitted as a part. I don't think you can now. I think you can take as many subjects as make a decent draft, but not say, "That is Part I which, if adopted, becomes part of the present Constitution."

MR. O'MARA: In other words, you could take the Rights and Privileges Article, the Judicial Article, the Legislative Article and whatever Article you wanted and say, "This is a part which, if adopted, becomes part of or supersedes the existing Constitution."

MR. VAN RIPER: Becomes part of the present Constitution?

MR. O'MARA: Yes.

MR. VAN RIPER: I think you would have to say "Shall Part I"—maybe with some further description, if you want it—"be adopted in lieu of or taking the place of Articles I to V in the present Constitution?"

MR. LLOYD: One thing—when spoken of as an alternative, it must stand on its own feet. It cannot overlap, because you won't have continuity there. There cannot be any overlapping.

MR. O'MARA: That supplants the other.

MR. LLOYD: You will bring back the old Constitution if that is defeated.

MR. O'MARA: It is your judgment that proposals in the alternative cannot be submitted in such a way that one or the other, assuming that there are two alternative proposals, must be adopted?

MR. VAN RIPER: No, I don't think so, because I think you are then depriving the people of the right the act gives them. It says (*reading*):

" * * * * And, 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 any of the alternatives or reject any or all of them."

MR. O'MARA: Can't the Convention under that grant of power frame the question in such a way that the people may accept any of the alternatives?

MR. VAN RIPER: And also adopt it without rejecting any of them?

MR. O'MARA: Without rejecting all of them.

MR. VAN RIPER: Don't you think that would be depriving the people of the right which they have here?

MR. O'MARA: No. I think it is a grant of power to the Convention granted by the Legislature, if indeed the Legislature may

¹ There is no record of this informal meeting.

grant power to the Convention—

MR. VAN RIPER: That is another question. I am not interpreting that. That is another question.

MR. O'MARA: —which the Convention, assuming that the legislative restriction is a valid one, may exercise in whole or in part. I think part of that grant of power is that the Convention may submit alternative propositions in such a way that the people may accept any one of them without rejecting all of them.

MR. VAN RIPER: Let me ask you: I assume we are confining our discussion to the legislative act? We are not talking about this overall power. Where did the Convention get any right to deal with alternatives at all, except from the statute?

MR. O'MARA: You mean aside from—

MR. VAN RIPER: Under the statute.

MR. O'MARA: From the statute.

MR. VAN RIPER: Only from the statute?

MR. O'MARA: Sure.

MR. VAN RIPER: What do they say you can do with alternatives?

MR. O'MARA: They say you can submit them in such a way that any of them may be accepted or any or all of them may be rejected.

MR. VAN RIPER: Any or all of them may be accepted or rejected?

MR. O'MARA: Read it again.

MR. VAN RIPER: (*Reading*):

“* * * in order that the people may adopt any of the alternatives or reject any or all of them.”

MR. O'MARA: Yes, adopt any or all alternatives. I say the Convention is justified in stopping there, if it desires to, and exercise only part of the grant of power which the Legislature gave them.

MR. VAN RIPER: Then you would deprive the people of the right to vote ‘yes’ or ‘no’ on the alternative.

MR. O'MARA: You can deprive the people of that by not submitting any alternative at all.

MR. VAN RIPER: But if you use the alternative, must you use it in the statutory sense?

MR. O'MARA: No, sir, I don't think so. I think that is the grant of power which envisions more than one thing, and I think it gives to the Convention the right to submit alternatives in such a way that any one of them may be adopted, plus, if the Convention so decides, in such a way that all of them may be rejected.

MR. VAN RIPER: But it doesn't have to reject all of of them as it wants; it can reject all or any of them. You are not talking about one vote in the referendum?

MR. O'MARA: No. I say if two alternatives were put on the ballot, if it were the desire of this Convention that it did not want a Constitution free of a tax clause, for instance, and that the Convention felt that either one or another of the tax clauses ought to be in the Constitution, but it felt that the people should decide which of the two should be in the Constitution, the referendum may be framed in that way under the grant of power by the Legislature. That is my point.

MR. VAN RIPER: Don't you think if it were framed that way, that the people have the right to question the proposed tax clause?

MR. O'MARA: No, I don't think so; not if it was proposed in that way.

MR. A. J. CAFIERO: Aren't they given the right to vote "no" on the main question?

MR. O'MARA: Yes, they can vote "no" on everything, including the alternative.

MR. CAFIERO: That is the same as the main question.

MR. VAN RIPER: Let me ask you: What would happen here, Senator, if your big part was defeated and your other parts were adopted or approved.

MR. O'MARA: If the other parts were approved? When you say "if the other parts were approved," on my assumption either one or the other is going to receive a greater number of votes. If that is framed so it becomes a part of the new Constitution, if it is adopted, it is limited to that. The question which I asked you when you appeared before our Committee was whether or not alternatives could be submitted in such a way that even if the new Constitution failed of adoption they could be carried by the people as, in effect, amendments to the existing Constitution. I asked for your opinion on that.

MR. VAN RIPER: I guess I didn't give any. You and I fenced a little that day.

MR. O'MARA: You fenced.

MR. VAN RIPER: I haven't any hesitancy in giving it. I say they can be and I say so in here (*referring to written opinion as Attorney-General given to the Committee on the Executive*).

MR. O'MARA: I thought you leaned the other way.

MR. VAN RIPER: I said so in here, in the opinion, when they are submitted in part. Now, getting back to your proposition, suppose you have this as Part 1, and this is a so-called semi-completed document; Part 2 is the tax clause; and Part 3 is the gambling clause, let us say. Let us say Part 1 is defeated and Parts 2 and 3 get a majority of the vote.

MR. O'MARA: But they don't get a majority, as between one or the other. Let's restrict it to a tax clause: Either tax clause "A" or

tax clause "B."

MR. VAN RIPER: I think you and I agree about alternatives. You feel with an alternative you have to have two questions; in other words, you have to play one against the other.

MR. O'MARA: Right.

MR. VAN RIPER: And you cannot play one of these against the main body?

MR. O'MARA: No, not at all.

MR. VAN RIPER: We are in agreement on that.

MR. O'MARA: My point is this: If the referendum is framed so that as between tax clause "A" and tax clause "B," the clause which receives the greater number of votes of the people voting on that proposition is a part of the new Constitution, it becomes a part of the new Constitution. But if the new Constitution fails, then that becomes an amendment to the old Constitution. That depends, as I see it, upon the manner in which the question is proposed to the people. It may be proposed so that it becomes a part of the Constitution only if the new Constitution is adopted. On the other hand, it may be proposed in such a manner that regardless of whether or not the new Constitution carries, clause "A" or clause "B" becomes a part of the new Constitution or an amendment to the old Constitution. It seems to me that is a question for the Convention to decide in framing the question.

MR. VAN RIPER: I haven't any hesitancy in saying it can be so framed that this tax clause, if adopted, will become a part of the present Constitution. Now, whether it becomes part of the new Constitution—that is the whole question in dispute.

MR. O'MARA: I understand you have no objection. You think that can be done, providing we carry through the form of submitting as much as we want of the new Constitution as part.

MR. VAN RIPER: Then, in effect, it does not become a part of the new Constitution; it becomes a part of the present Constitution.

MR. O'MARA: Right.

MR. VAN RIPER: I cannot go along with the theory that if you submit alternatives you can subject the people to the right to reject all those alternatives.

MR. CAFIERO: Aren't we, when they can vote "no" on the main question?

MR. VAN RIPER: If we agree on this. We say, here is the big part; here is Part 1 which, if adopted, shall become a part of the present Constitution in lieu of the first ten Articles thereof. Then we have the tax clause down here which, if adopted, becomes part of the present Constitution. What does a "no" vote down here have to do with this thing up here?

MR. CAFIERO: It defeats it.

MR. O'MARA: No it doesn't, unless it is proposed in such a way.

MR. LLOYD: Doesn't that have to cover the entire Legislative Article—that is, if it is the one that has the alternative attached to it?

MR. VAN RIPER: The alternative doesn't have to be attached to any Article. The tax clause doesn't have to go in any particular Article; it can be all by itself. The Senator will agree on that.

MR. O'MARA: Yes. So can the gambling clause.

MR. VAN RIPER: So can a dozen other clauses. You can have that by itself and, if adopted, it becomes a part of the present Constitution, regardless of what happens to the big part.

MR. WAYNE D. McMURRAY: Then the people would never have the right to vote "no" on an amendment to the existing Constitution, on your theory.

MR. VAN RIPER: The Senator wants to preclude them from rejecting it.

MR. O'MARA: I say the Convention may do that.

MR. VAN RIPER: That is what I question under this language here.

MR. O'MARA: As I say, you and I disagree.

MR. VAN RIPER: You are in the Convention and I am not. That is the advantage you have.

MR. O'MARA: I don't know how much of an advantage that is.

MR. CAFIERO: We are all striving for simplicity and to have as few questions as possible. What would be the effect of a "no" vote to the main question, "Shall the Constitution be ratified as proposed?"

MR. VAN RIPER: That would not be the question, Judge, as I understand it. The question would be, we will say, "Shall Part I be adopted and become a part of the present Constitution, in lieu of Articles I to V inclusive?" That becomes a simple question.

MR. CAFIERO: Couldn't it be put in one question: "Shall the Constitution be adopted as proposed?" and select which of the alternatives you want?

MR. VAN RIPER: I don't see how you can do that in one question. You can't vote on three different things in one vote.

MR. CAFIERO: Then you can select the one you like.

MR. FRANK H. EGGERS: On your question Number 4—if the proposed new Constitution is submitted as a whole, may it be accompanied by alternative proposals? Now your answer to that was "no." If you change that wording and framed it this way: "If the proposed new Constitution is submitted as a part may it be accompanied by alternative proposals?" then your answer would be "yes," to agree with Senator O'Mara.

MR. VAN RIPER: I wouldn't like to answer yes. If you ask the question: "May the proposed new Constitution be submitted as a

part?" I think the Senator would want to say "May a part be submitted which covers various articles?"

MR. O'MARA: Which is essential.

MR. VAN RIPER: I wouldn't want to say that the Constitution as a whole is a part.

MR. EGGERS: But your answer would be "yes" if you change that one word.

MR. VAN RIPER: My answer would be this—that it is up to the Convention—with due regard, which I am sure the Convention has, for the niceties that it has in preparing a Constitution—to say what is a part and what is not a part.

MR. O'MARA: May I ask you this: The act setting up the Convention put certain specific restrictions upon the Convention. There were, as I recall them, two. First, that the Convention should not propose any change which would modify the geographic boundaries of counties and, second, that it should not change the basis of representation of counties in the Legislature. Those were the two restrictions that were put on the Convention in the early part of the act, at any rate.

Then we come down later in the act to this language as to what the Convention may submit—I mean the form. It may submit a whole new Constitution or it may submit parts, etc. Then the Secretary of State is enjoined to examine the result of the Convention's labors and find out whether or not it agrees with the act of the Legislature. Does that apply merely to the restrictions upon the subject matter with which the Convention may deal, or does it also apply to the form in which the product of the Convention may be submitted to the people, in your judgment?

MR. VAN RIPER: Well, Senator, I did not deal with that subject in my opinion. I am not going to deal with it definitely and formally here at the moment. I just call your attention to the fact that in the last paragraph of the Preamble it says: (*reading*):

"Whereas, the people in the exercise of their sovereign power may commit their delegates to binding restrictions on the scope and subject matter * * *."

MR. O'MARA: "Subject matter"?

MR. VAN RIPER: "Scope and subject matter."

MR. O'MARA: Now, what does that mean?

MR. VAN RIPER: Let's talk about it. You talk.

MR. O'MARA: I would like to hear you. I asked you the question: "What does it mean?"

MR. VAN RIPER: I really don't want to give a definite opinion on it now. I haven't given it thought and study, and neither has my staff on that phase of it. I appreciate the fact it may possibly come to that. I am perfectly willing to work on it. I don't think that you

can glance easily and without some concern over those words I have just quoted.

MR. O'MARA: We had occasion to ask your opinion earlier in the proceedings, this Committee on the Legislative, on whether or not we could deal with a proposal which was submitted by a delegate which had for its subject matter the changing of the basis of representation, and you said that under the terms of the act, as I recall your opinion, we could not. I think you went on further to say that there was some doubt in your mind as to whether or not the Legislature had the right to circumscribe the Convention even in that respect.

MR. VAN RIPER: I went further than that. I think I said, generally speaking, that the Convention was more or less a law unto itself except where it had been specifically instructed by the people, and I felt in that case you had been specifically instructed.

MR. O'MARA: Let's take that out of consideration—the change in basis of representation—and suppose we deal only with the matter of submission to the people. Assuming that the Constitution went to a vote, would any limitation on the matter of submission to the people be binding if the people in effect ratified at the referendum (which they would do if they adopted the result of the Convention's labor) whatever the Convention submitted.

MR. VAN RIPER: I think that is a question you asked when I appeared before the Committee. They will probably have a record, so I must be consistent and answer in the same way. I think that whatever the people voted for and adopted, the courts would sustain. But I think your difficulty would be—that is the only thing I had in mind in giving an opinion—I think the difficulty would be between the 12th day of September, the day you adjourn, and November 5th, or whenever the election is held, in getting it on or off the ballot. I think you might find judicial intervention. I think once the people voted, the court would sustain it.

MR. O'MARA: You mean it might be necessary to mandamus the Secretary of State?

MR. VAN RIPER: If necessary—or somebody might enjoin the Secretary of State.

MR. O'MARA: Don't you think that there could be a speedy solution of that litigation?

MR. VAN RIPER: But here's the situation you might find yourself in. Suppose on the 8th of September you submit it to the Secretary of State. He has two days in which to give it back. He has until the 10th, and he gives it back and says it is O.K. And on the 12th of September you are out of business. On the 14th of September someone comes along with an injunction restraining the Secretary of State from putting it on the ballot, and suppose the Court of

Errors and Appeals immediately convenes and decides it should not go on? Then where are you? You have no Legislature.

MR. O'MARA: We will have to call the Legislature back and extend the life of the Convention.

MR. VAN RIPER: Can you do that where the people have fixed the adjournment date?

MR. O'MARA: It all comes back to the proposition of whether or not the people, on passing on the results of the Convention's labor, would ratify any change in that act.

MR. VAN RIPER: Then you get whether or not the people have the right to have it submitted to them in the manner the Legislature said.

MR. O'MARA: I don't think you would have much hesitation in saying, if the thing actually came to a vote, that no matter how much variance there was from the terms of the bill setting up the Convention, and it was actually approved by the people in the referendum on election day, the courts would sustain it.

MR. VAN RIPER: I call your attention to the language which was in the bill (*reading*):

"Do you favor the holding of a State Constitutional Convention which shall prepare for submission to the legal voters next November fourth, for their adoption or rejection, in whole or in part * * *."

Does that come within the word "scope" which the Preamble contained and which I stated to you a few minutes ago?

MR. O'MARA: I don't know that I get the force of that.

MR. VAN RIPER: The Preamble conveyed the impression to me—it says so—that the people have the right to commit their delegates to binding instructions on the scope and subject matter. Now, you take the whole question and all that was on the ballot, and it talks about three things: county boundaries, and it talks about submission on November 4 in whole or part, and it talks about legislative representation. Now, are all those things binding instructions?

MR. O'MARA: I don't know.

MR. VAN RIPER: I don't know either. We are in agreement on that.

MR. DAVID VAN ALSTYNE, JR.: What you read there about in whole or part, as you go along and take other phrases, would you take it that that was a limiting phrase? I take it that it was an enlarging phrase, a granting of additional power, additional right, to submit it any way we want it. Now, we come along and read of these other phrases and read a lot of limitations. I think the language was intended to broaden the scope.

MR. VAN RIPER: It didn't say that. Let me compare it with the language in the New York Constitution. Of course, they have constitutional conventions regularly every 20 years. They have a

provision in their constitution which says: (*reading*):

"Any proposed constitution or constitutional amendments which shall have been adopted by such convention shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention."

Now that is entirely different language.

MR. EGGERS: They give wide latitude.

MR. VAN RIPER: Then whatever the Convention wants to do—they do not restrict them with any "wholes" or "parts," or anything else.

MR. VAN ALSTYNE: There was no intention to restrict us.

MR. VAN RIPER: They certainly must have intended something by alternatives.

MR. VAN ALSTYNE: I think they intended to make it broad. They intended to give it a wide scope.

MR. VAN RIPER: You wouldn't contend for a minute that you could have a vote in whole or in part at the same time?

MR. VAN ALSTYNE: No.

MR. VAN RIPER: That is absolutely clear.

MR. O'MARA: I think it was certainly the intention of the Legislature, no matter what the punctuation is there—they could submit a whole Constitution with alternatives to certain provisions of the Constitution.

MR. VAN RIPER: It is all right to disregard the punctuation. Frankly, I don't know the correct way to punctuate; that is why I rely on the Chairman. Frankly, I think we have to take it, not what they intended but what the language says.

MR. O'MARA: Right. You are, however, in accord with the proposition that if the Convention so desired, alternative propositions could be submitted as long as the submission of the main question took the form of a part of the Constitution to supersede the existing Constitution.

MR. VAN RIPER: Supersede parts of the existing Constitution, so it was in effect submitted by the part method, each part standing or falling by itself and if adopted to become a part of the present Constitution.

MR. O'MARA: The only remaining question on which we substantially disagree is whether or not alternatives must be submitted in such a way that the people may reject all of them if they so desire.

MR. VAN RIPER: I guess we have sort of gotten beyond our first difference of opinion, so it now comes down to that. First, submitting alternatives to the Constitution as a whole—I don't think we concur in that. Do you think you can submit alternatives to the people and they have to accept some of them?

MR. O'MARA: Yes.

MR. VAN RIPER: And not reject any of them?

MR. O'MARA: Right. I don't think the Convention, even under the language of the grant of power—

MR. VAN RIPER: Senator, would you say that the people had to accept one of those alternatives regardless of any vote on anything?

MR. O'MARA: I certainly would.

MR. VAN RIPER: Wouldn't that, in effect, be adopting a Constitution here by vote of the Convention and not of the people?

MR. O'MARA: Not at all. I say the people have the right to choose between alternatives. Suppose there was no alternative, just one tax clause written into that Constitution—

MR. VAN RIPER: In the main part?

MR. O'MARA: In the main part. They have to take that or nothing.

MR. VAN RIPER: Right.

MR. O'MARA: Now, I say, why haven't they the right to express a choice between that tax clause or another tax clause, on the theory that the Convention does not want a Constitution without a tax clause but wants one with either "A" or "B," whichever the people shall decide?

MR. VAN RIPER: Wait a minute. If you are going to have a tax clause in here, in your big Part 1, and then have another—

MR. O'MARA: No, no. Have no tax clause in big Part 1, but have two tax clauses, "A" and "B," out there, and whichever gets the greater number of votes will be inserted in big Part 1.

MR. VAN RIPER: I don't agree about it being inserted in big Part 1, but as long as it is adopted it comes in the present Constitution. We have no quarrel about that. But then you say, here are two tax clauses which we will give you, and if every voter in the State votes against those clauses you will have one of them just the same.

MR. O'MARA: They can't vote against both.

MR. VAN RIPER: How would you submit it in the way of referendum on that?

MR. O'MARA: This is the substance, the way in which the proposal would be framed: "Which tax clause do you prefer, 'A' or 'B'?"

MR. VAN RIPER: You decide the matter of policy. That is for you gentlemen to decide, the matter of policy. But doesn't that amount to putting in the Constitution a provision which the people have not had the privilege of passing upon?

MR. O'MARA: Not at all, because they are going to pass upon it. Let me put it this way: If you don't accept—suppose you had a Constitution which is big Part 1 and which is practically all of the Constitution, let us say, except an amending clause, and in that big

part of the Constitution is written a tax clause, and there is then submitted one alternative, tax clause "B," and the referendum is: "Do you favor the adoption of alternative 'B' (whatever it is) in place of the clause which is in big Part 1—'yes' or 'no'?" Doesn't that give the people the right to accept or reject the alternative *in toto*? There is only one alternative in the bill.

MR. VAN RIPER: It gives them the right to accept or reject big Part 1 or the right to accept or reject the alternative; it gives them the right to vote on each one.

MR. O'MARA: That's right.

MR. VAN RIPER: That is a different story.

MR. O'MARA: That is merely a matter of arrangement.

MR. VAN RIPER: It is different in this—here you have only one alternative. Before we were talking about two alternatives, "A" and "B." You said, one they have to take.

MR. O'MARA: Certainly.

MR. VAN RIPER: Now, under your latest plan, they don't have to take anything. They can vote against the big part.

MR. O'MARA: They could do that before. In that event, either "A" or "B" would both fail unless the question were submitted in such way that the one receiving the greater number of votes would become, in effect, an amendment to the existing Constitution. I say the question could be framed by this Convention so that that referendum would be effective only in the event that the big Part 1 was adopted.

MR. VAN RIPER: You apparently do not attach very much weight to the statutory provision providing that the people may adopt or reject any or all of the alternatives, do you?

MR. O'MARA: I attach importance to it, but I say that is a grant of power by the Legislature, assuming the Legislature has the right to grant power to a Convention, which may be exercised in whole or in part, and if the Convention chooses to exercise only part of that power it may submit alternatives in such way that one or the other must be accepted.

MR. VAN RIPER: Do you think the Legislature intended to grant power to the Convention in derogation to the power which they expressly granted to the people?

MR. O'MARA: I would have to read the language of the bill. I don't know what they intended.

MR. VAN RIPER: Do you think they did?

MR. O'MARA: I do.

MR. VAN RIPER: Do you think they gave this Convention power to curtail power which the Legislature itself gave to the people under this law?

MR. O'MARA: I don't think that is any curtailment of the power

which they gave to the people.

MR. VAN RIPER: Don't you think the Legislature gave the people the power to accept or reject any or all alternatives on their own?

MR. O'MARA: No, if the Convention desired to exercise that full grant of power. But I think both the bill itself—both the Legislature and the people in ratifying that bill—gave a grant of power in the matter of submitting alternatives which the Convention may either exercise in part or in whole.

MR. VAN RIPER: Well, isn't it fair to assume—

MR. WINSTON PAUL: Well, I think I can clear this up if I ask the gentlemen this question: If this Convention adopted a taxation clause complete, but it had also an alternative to a part of that clause, a different method of taxing, would that not conform to the requirement of submitting in part with an alternative?

MR. VAN RIPER: Yes, I think it would. There is no question about that.

MR. PAUL: The people could accept or reject the alternative and they would still have the part submitted which, in my opinion, would conform with the requirements of the submission.

MR. VAN RIPER: They would have to adopt the part.

MR. PAUL: By a majority vote.

MR. VAN RIPER: But they would have to submit an alternative, and the people could vote "yes" or "no" on the alternative where a different method of taxing would be inserted in the part on taxation.

CHAIRMAN: I want to understand that. Suppose we had only one multiple-choice question?

MR. PAUL: Let's suppose you have a tax clause, as a part, a complete clause in every part, but there was appended at the bottom: "If you prefer the following alternative to section so and so vote 'yes' or 'no'." And if the majority of the people voted "yes" on that alternative, that particular section from the part would be taken out and the other section, the other alternative, put in. That would conform, would it not, Mr. Attorney-General, to the requirement of the submission?

MR. VAN RIPER: That would meet any objection completely to that that I have.

MR. EGGERS: The Attorney-General said "yes" to us on that Committee.¹

MR. O'MARA: May I have a copy of the opinion of the Attorney-General?

MR. VAN RIPER: You may have my copy, if you promise not to find any fault with it. I don't have another copy. I shall be very glad to sit down with the Committee or with you or any of the com-

¹ The reference is to the Committee on the Executive of which Mr. Eggers was a member.

mittee chairmen or any delegate or anyone else and try to work out wordage on this thing.

MR. SOMMER: Don't you think you should call the Secretary of State into these conferences? As a matter of fact, the determination lies with him.

MR. O'MARA: I think the Attorney-General's opinion will carry great weight with the Secretary of State.

MR. EGGERS: He may not accept it. Well, Senator, are you satisfied now with the present situation?

MR. O'MARA: I don't know what the present situation is. I want to study this opinion, but I think there comes out of the Attorney-General's idea that in one way or another there can be submitted alternative propositions, and if it is the will of the Convention that there be alternatives on certain burning questions, I think the way can be found to do that.

MR. VAN RIPER: As I said, I will be very glad to sit down with you or any delegate and work out wordage.

CHAIRMAN: My report stated only that we could not submit a Constitution as a whole with alternatives—that we had to do it with parts.

MR. O'MARA: I am agreed on that, but I say that anything less than a whole is a part.

MR. PAUL: My suggestion would clear that up if you have your taxation thing as a part.

MR. O'MARA: Put it in the main part and then have your alternative.

MR. J. FRANCIS MORONEY: I don't think you should put it in the main question. I think you should put the whole thing separate.

MR. O'MARA: Suppose you have one clause and then a separate referendum on whether another tax clause shall supersede.

CHAIRMAN: Does anybody wish to ask any questions?

MR. ROBERT C. CLOTHIER: We have another matter to discuss with the Attorney-General regarding the rules.

MR. O'MARA: We have this proposition and we would like to get your views on this.

MR. VAN RIPER: First, I haven't read the rules and, second, I am in enough trouble now.

MR. O'MARA: Maybe not having read them, you will know more about them than we do, because we are confused. The rules provide that on third reading no proposal may be adopted unless it receives 41 votes. The rules also provide in other instances, and the one that comes to mind is that an amendment of the rules of the Convention may be carried by 41 votes. Now, there came on for debate today an amendment to a Committee Proposal.

MR. VAN RIPER: I happened to be in there, Senator. I heard it.

MR. O'MARA: The vote on the amendment was 37 in the affirmative and 34 in the negative, and the Chair ruled, and I think properly, that the amendment carried. It is my understanding that where the rules do not specifically require, the proposition can be carried by the majority of the membership of the Convention—that the majority of those voting on the proposition is sufficient to carry it.

MR. CLOTHIER: Assuming a quorum is present.

MR. VAN RIPER: That doesn't send it to the people, that vote.

MR. O'MARA: No.

MR. AMOS F. DIXON: It sends the amendment to the people as part of the Article.

MR. VAN RIPER: What I had in mind was, turning to the statute here: "When the Convention by vote of the 41 delegates shall agree upon a proposal * * *."

MR. DIXON: That is on third reading.

MR. O'MARA: This is the amendment which provides that on impeachment of the Governor, the Chief Justice of the court of last resort will preside. This was adopted by a vote of 37, which was less than a majority of the Convention but it was a majority of those voting on the proposition; thereby it becomes part of the Executive Article. The Executive Article as a whole, including this amendment, of course, on third reading, must secure 41 votes. That is what goes to the people. The Chair ruled, and I think properly, that this amendment was carried by a vote of 37 to 34.

MR. VAN RIPER: Isn't the effect of this Convention vote to include this proposal in the Committee Report? Isn't that what it amounts to?

MR. O'MARA: Yes.

MR. VAN RIPER: Now, that proposal must come up for a vote and get 41 votes before it goes to the people?

MR. O'MARA: Right.

MR. VAN RIPER: Dr. Saunders handed me this (*reading Rule 12*):

"A majority of delegates present, a quorum being present, shall be sufficient for the adoption of any motion or resolution or the taking of any action except where the affirmative vote of a greater number shall be required by law or by these rules."

Under Rule 12 it seems very clear that a quorum being present, a majority of the quorum shall be sufficient to take any action unless there is something to the contrary.

MR. VAN ALSTYNE: The interpretation is correct. Now we go on from there and the question is, is it right?

MR. NATHAN L. JACOBS: We are meeting tomorrow morning

on that last suggestion—that the chairmen of the Committees meet before the Convention on changing the Rules so that it will require 41 votes to carry any proposition that will ultimately be adopted for submission to the people.

CHAIRMAN: I think it was the intention that anything that went to the people needed 41 votes.

MR. JACOBS: I think that is not quite accurate. What may happen is—there are a lot of things such as—they may not be sufficient in and of themselves to cause the people to vote against the Article as a whole, so actually you have not had 41 votes, and I think we are entitled to have 41 on that particular issue that Senator Van Alstyne was proposing.

MR. VAN RIPER: Isn't that what Rule 12 says? Wasn't this motion adopted by a vote of 37 to 34?

MR. JACOBS: We are not discussing that. We are discussing whether that is the desirable result and, assuming it is not desirable, as we feel it is, we are going to amend the Rules tomorrow. How about suspending the Rules?

MR. O'MARA: By unanimous consent.

MR. JACOBS: I suggest we hold off on any vote on amending any other Article until after we amend the Rules and it comes up for a further vote.

MR. O'MARA: You won't be entitled to a further vote unless he reconsiders.

MR. JACOBS: I think he has.

MR. O'MARA: The question is whether the Convention will think so. You can't amend the Rules retroactively.

MR. JACOBS: I, for instance, being one of the majority, can move on Wednesday to reconsider this particular matter and then it will come up all over again.

MR. O'MARA: How many votes will you have to get to reconsider?

MR. JACOBS: 41.

MR. O'MARA: I agree with you, and I think there should be 41 votes required.

MR. VAN ALSTYNE: Why don't you appoint a committee to draft an amendment that will require that everything that is to go into the Constitution will require 41 votes?

MR. CLOTHIER: Mr. Dixon, why don't you serve as chairman of a committee, consisting of Mr. O'Mara, Senator Van Alstyne, and Mr. Jacobs, and have something for us before ten o'clock tomorrow.

MR. DIXON: All right. Report at 9:30.

If you move for reconsideration, it has to be done tomorrow and then lay on the table for another day.

MR. O'MARA: By unanimous consent.

MR. DIXON: It has to be done on the following day, for reconsideration.

MR. CLOTHIER: Could you do it right away by unanimous consent?

MR. VAN ALSTYNE: Yes, by unanimous consent to amend the Rules. I will bring it up tomorrow morning, early.

(The session adjourned)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON SUBMISSION
AND ADDRESS TO THE PEOPLE

Wednesday, August 13, 1947

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

PRESENT: Cafiero, Lloyd, Montgomery, Moroney, Murphy, Paul and Saunders.

Chairman Wilbour E. Saunders presided.

CHAIRMAN WILBOUR E. SAUNDERS: I would like to show whether it is the wish of the committee members to have this an open or closed meeting.

(It was unanimous that the meeting be an open one)

CHAIRMAN: As I understand it, may we incorporate in the minutes of the formal meeting the fact that we are now getting a tentative statement, to get advice concerning the form if there is no alternative suggested and the Constitution is to be proposed as a whole?

Now, the next step. What is the next step?

MR. FRANCIS D. MURPHY: Mr. Chairman, I think that it is obvious from the wording of the enabling act that this Constitution may be submitted in parts, so I suggest that we frame a question which will be submitted in parts to the people.

CHAIRMAN: A sample question on that basis?

MR. MURPHY: Exactly.

CHAIRMAN: There is no one here who has any question that the law specifically says we may submit it in parts. Are we agreed on that?

MR. MURPHY: I have none, Mr. Chairman.

MR. A. J. CAFIERO: I think we are in accord on that point.

CHAIRMAN: Let's try to see what is a sample of that. Do you want to read that off, Mr. Murphy?

MR. MURPHY: Judge Lloyd, will you mark your paper Form No. 2? We are now going to attempt to fashion a sample ballot based upon the language of the enabling act, "in parts." Mr. Chairman, may I ask Mr. Moroney if he prepared such a sample ballot?

CHAIRMAN: Did you, Mr. Moroney?

MR. J. FRANCIS MORONEY: No, Mr. Murphy. I prepared sample ballots on the basis of the difficulties that we have been going through. In other words, the questionable ballots.

CHAIRMAN: That is, with alternatives, you mean?

MR. MORONEY: Yes.

CHAIRMAN: Let's get this out of the way, because this should be very simple.

MR. MURPHY: Mr. Chairman, may I ask Mr. Paul if he prepared a sample ballot to be submitted to the voters in parts?

MR. WINSTON PAUL: No, I did not because I did not have a sample ballot at home. Unfortunately, my stuff is in my office, and I couldn't get there. I have only the form of question that I had yesterday.

MR. MURPHY: Mr. Chairman, may I then tell Judge Lloyd what I have here, to start this off?

CHAIRMAN: Do, please.

MR. FRANCIS V. D. LLOYD: If I may interrupt, I previously submitted a suggested form of ballot to the Committee, a copy of which the Chairman has in duplicate, and I think that every member has a copy of that.

MR. MURPHY: Judge Lloyd, would you mark this, then, Form No. 2?

MR. LLOYD: I am doing the stenographic work, then?

MR. MURPHY: Yes, and only because you are in a central point and we can understand your writing. You can't understand mine. The ballot reads as follows:

"Are you in favor of the adoption of articles to the Constitution of the State of New Jersey, as proposed by the delegates to the Constitutional Convention—"

CHAIRMAN: Mr. Lloyd said, "as agreed upon."

MR. MURPHY: I will agree to that—"and a copy of which articles have heretofore been sent to you." And, then, "For such adoption," a square; "Against such adoption," a square.

CHAIRMAN: Will you pause while I ask Mr. Watson to join us, and introduce Mr. Watson.

(Mr. Russell Watson, Counsel to Governor Alfred E. Driscoll, was introduced to the members of the Committee)

CHAIRMAN: What should be our procedure? We have asked Mr. Watson to meet with us. It is not quite fair to take up his time unless we want to go ahead and question him. Mr. Van Riper, you know, is also coming.

MR. PAUL: He is in the building here awaiting our call.

(Discussion off the record. At this point Attorney-General Walter D. Van Riper joined the meeting and informed the Chairman that the Secretary of State would not be present at the meeting)

MR. PAUL: Mr. Chairman, before we start, may I suggest that

it would be fitting and proper for the records now to show that the Attorney-General and the attorney of the Governor, Mr. Russell Watson, are here at our request, and we appreciate and record our appreciation of their being here, particularly Mr. Van Riper, who gave up a holiday to be here? We also invited the Secretary of State, but he is unable to be here.

CHAIRMAN: Will that be made a part of the record by unanimous consent?

(No objection was heard)

CHAIRMAN: Now, gentlemen, we are very grateful to you. All of this grows out of section 23 of the enabling act, which you have undoubtedly read many times—that is, the Convention may frame a Constitution to be submitted as a whole to the people for adoption or rejection, or it may frame one or more parts of a Constitution, each to be submitted to the people, and that 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 any or all of the alternatives or reject any or all. This Committee is, first, of the opinion that there is no question but that the Convention has a right to submit the Constitution either as a whole or in parts, and we assume that you gentlemen would agree to that.

MR. RUSSELL WATSON: Yes.

CHAIRMAN: Then, the disputed point comes not about submitting it as a whole, for there would be no question—simply vote for or against it as a whole—but the disputed points have been, first, as to whether the Convention had a right to have alternatives if it were submitting it as a whole.

MR. WATSON: Right.

CHAIRMAN: And that, secondly, there have been questions as to how a question would need to be framed if it were to be submitted as a part, for example, involving such questions as if a part were adopted and the major portion rejected, what would be the situation then?

Members of the Committee, I have stated our dilemmas, and I have tried to do it very briefly.

MR. MURPHY: I think you have.

MR. PAUL: May I ask Mr. Watson if he has seen the Attorney-General's opinion dated August 8?

MR. WATSON: Yes, I have.

MR. WALTER D. VAN RIPER: I gave Mr. Watson a copy of it.

MR. MURPHY: Mr. Chairman, I would suggest, then, that in view of the fact we have heard the Attorney-General and we know his views on this subject, that we hear Mr. Watson and see what he has to say with reference to the entire subject.

CHAIRMAN: Does that meet with the Committee's agreement?

(Entire Committee indicates approval)

MR. WATSON: I am glad to have this opportunity, Mr. Chairman and gentlemen of the Committee. May I say that the disagreement between the Attorney-General and myself is one of principle, one of legal interpretation, and it is entirely in a friendly spirit. We have discussed this problem several times and at length, neither budging the other.

Anticipating that this call might come yesterday, I have reduced my views to writing—that is the original *(indicating Chairman's copy)*, and I have four other copies here. There was not time for mimeographing. Perhaps one would serve for two copies. I have a copy for you, Walter.

MR. VAN RIPER: I will share one with someone else.

MR. WATSON: Then I have three or four for the gentlemen of the press, if they want them.

Gentlemen of the Committee: I think the best way to submit this is to read this opinion, and I will comment upon it as we go through it. So that it will be more clearly intelligible at the outset, I would like to state two, three or four fundamental principles which are the bases of my thinking, and if the opinion is approached from those bases, I think it will be more illustrative.

First, the Convention is a constituent assembly representing the sovereign authority of the people. As such, the Convention is plenary and has all and any powers it may choose to exercise unless it has been effectively limited in some respects. There, too, in reading Chapter 8, we don't look for grants of power. The Legislature did not grant powers to this Convention. The Legislature submitted a public question to the people, and the people granted the powers. Those powers, as granted by the people, are limited only in two respects: Prohibition against change in county territorial limits and against change in the basis of legislative representation. So, in reading Chapter 8 we don't look for grants of power, but we look to see only if there are any positive or effective prohibitions against the exercise of power. Now, nowhere in Chapter 8 is there any prohibition which would prevent the Convention from submitting a principal proposition and a part alternative to some provision included in the principal proposition. You find no prohibition of that in Chapter 8 today.

Now, as we proceed with my opinion I think we will find plainly affirmative provision for such a submission.

(At this point, Dr. Robert C. Clothier joined the meeting)

In my view, gentlemen, under Chapter 8 the Convention may submit proposals any way that it sees fit, as a whole, or in parts, or with

alternatives to provisions of the whole or to provisions of the parts.

Now, what is a part? A part, gentlemen, is anything that this Convention says it is. It is anything short of a whole. A part—the Bill of Rights could be a part if it were so submitted. The Convention could submit two Bills of Rights. The people could take their choice. That would be a part which would stand or fall by itself, so that if the remainder of the Constitution were rejected and that part were adopted, it would be incorporated into the present Constitution. Or it might submit the Bill of Rights as a constituent section of the proposed Constitution with an alternative, for instance, with or without the collective bargaining provision. So, a part may be an entire Article or it may be a provision of an Article, so long as it presents completely a single constitutional proposition. To be specific, we turn to Section VII of Article IV of the present Constitution, paragraph 1: “No divorce shall be granted by the Legislature.” That could be a part if the Convention decided so to submit it, or the Judiciary Article could be a part. To illustrate it, the proposed Constitution could be presented with the Judiciary Article as a part, standing or falling by itself regardless of the fate of the remainder of the Constitution, or it could be presented with a Judiciary Article incorporated with an alternative Chancery section, for instance. The Chancery section would be attached to the Judiciary Article to be incorporated in the Judiciary Article as it might or might not receive the majority of the votes cast.

Now, with that preliminary statement, may we address ourselves to this opinion?

CHAIRMAN: Please.

MR. WATSON: First, gentlemen, we begin by stating the questions which were propounded and answered by the Attorney-General and with which we are in friendly disagreement, but it is unnecessary to read those—four, five and six—as we are all thoroughly familiar with them. It suffices to say, as the Chairman stated at the outset, that the fundamental difference of opinion is whether an alternative may be an alternative to the Constitution submitted as a whole—may be presented as well as an alternative to a part. Now, I think it may be presented either way.

Now, we turn to page 2 (*reading*):

“In my opinion, the fourth and fifth questions should be answered in the affirmative and the sixth question in the negative.”

I think that needs no argument.

CHAIRMAN: Perhaps. The whole may be accompanied by alternative propositions—you say “Yes”?

MR. WATSON: I say “Yes.”

CHAIRMAN: And the fifth one is—if—

MR. WATSON: It be so submitted and the proposed Constitu-

tion is adopted by the people, and one or more of the alternatives are also adopted, do they become a part of the new Constitution? And I say "Yes."

CHAIRMAN: Thank you.

MR. WATSON: Now, the sixth: If the Constitution is submitted as a whole accompanied by alternatives and if the Constitution is defeated, then the alternatives would fall. My answer there is "Yes." If it is submitted as a whole with alternatives and the whole fails, the alternatives would fail, too, because you can't have alternatives to nothing, you see?

Now, I will proceed slowly, unless you want me to go more quickly (*continues reading*):

"In my opinion, the fourth and fifth questions should be answered in the affirmative and the sixth question in the negative. It is my opinion that the Convention may submit a Constitution as a whole accompanied by an alternative or alternatives to any part thereof in such manner that if both the proposed Constitution and the alternative or alternatives are adopted by the people, the alternative or alternatives would become part or parts of the new Constitution taking the place of the part or parts to which it or they are the alternative or alternatives."

And that's the point in dispute.

Now, this conclusion rests upon Chapter 8 of the Laws of 1947, pursuant to which the people established a Constitutional Convention, which is now in session, and upon the plenary powers of the Convention—on two grounds:

First, with respect to the powers of the Convention under Chapter 8, and I quote the provisions which I think are pertinent to this inquiry (*reading*):

Section 2. "The Constitutional Convention shall prepare and agree upon a new State Constitution, revising, altering or reforming the present Constitution in such part or parts, and in such manner"—part or parts, and in such manner—"as the Convention shall deem in the public interest; * * *."

Now, there is the fundamental description of the powers of the Convention, "part or parts, and in such manner." Could anything be clearer? (*Reading*):

Section 3. "The Constitutional Convention shall complete and agree upon its proposals * * * and shall provide for submission thereof * * * for approval or rejection by the legal voters, either as a whole or in such parts and with such alternatives as the Convention may deem desirable."

"As a whole with such alternatives," or "in parts and with such alternatives," as the Convention deems desirable.

And section 23, which you have just read, and further on I will submit what I think is self-evident. Section 23 outlines three methods of submission (*reading*):

Section 23. "The Convention may frame a Constitution to be submitted as a whole to the people for adoption or rejection * * *."

That is one; and two (*reading*):

"* * * or it may frame one or more parts of a Constitution, each to be so submitted to the people that they may adopt or reject any part * * *."

And three (*reading*):

"* * * and, if the Convention so determines, it may also"—

"It may also"—indicating that this is a third alternative (*reading*):

"it may also frame one or more parts to be submitted in the alternative in order that the people may adopt any of the alternatives or reject any or all of them."

* * * *

Section 28. "If a Constitution as a whole is submitted to the people and a majority of all votes cast for and against its adoption shall be in favor of its adoption, then it shall become the Constitution of this State taking effect according to its terms:"—

Now, all of this is not strictly pertinent. (*Reading*):

"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, taking effect according to its terms. In any such case the Secretary of State shall certify the results of the election to the Governor and the Governor shall thereupon issue his proclamation which shall contain either the Constitution of the State as adopted or, if but one or more parts have been adopted, then the Constitution of the State as so revised."

Also fundamentally pertinent is the question upon which the people voted. This is what they saw on their ballots (*reading*):

"Do you favor the holding of a State Constitutional Convention"—

and this is the grant of power not from the Legislature, which has no authority to grant powers, but it is the people who grant those powers (*reading*):

"which shall prepare for submission to the legal voters next November fourth, for their adoption or rejection, in whole or in part, a new State Constitution revising, altering or reforming the present Constitution in such part or parts and in such manner as the Convention shall deem in the public interest, * * *."

And that is all the people said, excepting for two distinctions, the county territorial change and any change in legislative representation.

Now, the Attorney-General's opinion limits the Convention to two methods of submission, as I understand it—"as a whole, or in parts." He thinks that alternative parts may be submitted, but that a new Constitution submitted as a whole may not be accompanied by alternative proposals. In my view, section 23, above quoted, plainly authorized three methods of submission:

- (1) As a whole for adoption or rejection as a whole;
- (2) In one or more parts—parts being what this Convention decides to present so long as it is a single, at least a single constitutional proposition—so that any part may be adopted or rejected; and
- (3) With one or more parts in the alternative so that any of the alternatives may be adopted or rejected.

The third method clearly authorizes the submission of "parts" to be submitted in the alternative. Parts of what? Obviously, parts of the proposed Constitution. Therefore, under section 23 the Convention could submit a new Constitution with alternative proposals to parts thereof, standing or falling with the proposed Constitution, or it could submit parts of a Constitution in the alternative, standing or falling individually—either way.

This construction of section 23 is supported by the other quoted provisions of Chapter 8. Now here, really, comes the meat of the Article. Under section 2 the Convention is directed to prepare and agree upon a new State Constitution, revising, altering or reforming the present Constitution "in such part or parts and in such manner" as the Convention shall deem in the public interest. Under section 3, the Convention is directed to submit "its proposals either as a whole or in such parts and with such alternatives as the Convention may deem desirable." This section contemplates alternatives either to the Constitution as a whole or to the parts. It is an undue restriction to say that alternative applies to "parts" and not to the "whole." This section contemplates alternatives either to the Constitution as a whole or to the parts thereof.

Section 28 provides for the submission of one or more parts of the Constitution as aforesaid. Now, what do these words "as aforesaid" mean? The quoted words "as aforesaid" relate the manner of submission to sections 2, 3 and 23. Otherwise, they are meaningless.

Finally, in answer to the question submitted under section 13, the people, by a large majority, empowered the Convention to prepare and submit, "in whole or in part, a new Constitution, revising, altering or reforming the present Constitution in such part or parts and in such manner as the Convention shall deem in the public interest." "In such manner, with or without alternatives"—here is a broad grant of sovereign power, unrestricted except for the prohibition of change in county territorial limits or in legislative representation, also contained in the public question. The question as it appeared on the ballot and the people's answer brush aside legalistic arguments which would narrow the power of the Convention respecting the method of submission.

Except for change in county territorial limits and except for change in legislative representation, the Convention has authority under Chapter 8 to submit a proposed Constitution in whole or in parts and with such alternative or alternatives either to the parts of the whole or to individual parts as it "shall deem in the public interest."

Attention is directed to the vitally important fact that the Attorney-General's opinion would restrict the power of the Convention, while the view herein presented recognizes the broad scope of

the powers of the Constitutional Convention, subject only to the two specific limitations set by the people.

A concrete illustration of the application—I think sometimes these generalities are helped by practical applications, so I undertook to do that. It is not my province to suggest methods, but it merely points up this general argument—a concrete illustration of the application of the principle of broad construction appears in the tentative draft of the Legislative Article prepared by the Committee on the Legislative. I am not expressing any opinion as to whether that is a wise proposal, or an unwise policy. It has nothing to do with this opinion but, as I said, it's an illustration. The Article is in eight sections. Section VII contains 11 paragraphs. Paragraph 2 of Section VII appears in two alternatives designated as "Alternative A" and "Alternative B." Concerning these two alternatives, the Committee in its final report stated (*reading*):

"The Committee recognizes that the issue created by the difference of opinion as to whether or not the present gambling clause should be liberalized is one which will excite great interest and discussion among the people of the State. It feels that, as to an issue which has created such divergence of opinion, the people should be permitted to express their preference. It, therefore, proposes that there be submitted at the November election alternative propositions on gambling; the first alternative being the retention of the present gambling clause; the second being a liberalized gambling clause which would permit not only pari-mutuel betting, but would also permit the Legislature to authorize and regulate the conduct of specified games of chance by bona fide charitable, religious, fraternal and veterans organizations or associations, and volunteer fire companies, subject to local option. It is proposed that the referendum be framed in such a way that the clause which receives the greater number of votes as between the two should be inserted in the new Constitution."

Now, in the Attorney-General's opinion, this manner of submission would violate Chapter 8. The construction herein advanced would permit the accomplishment of the Committee's objective, if such be the will of the Convention. In other words, if that were the only alternative submitted, it would be an alternative to a part of a proposed Constitution.

The problem faced by the Committee was anticipated by Chapter 8 in the specific language of sections 2, 3 and 23, as hereinbefore analyzed on pages 4 and 5. I think that language specifically covers this situation.

In brief, it is within the contemplation of Chapter 8 that a Constitution may be submitted in whole and in parts, provided the parts are alternatives to provisions of the whole. Section 23 provides that the Convention may "frame one or more parts to be submitted in the alternative," but it contains no limitation that such parts may not be alternative provisions of the whole.

So much for that—that is, Chapter 8 which, as I say, does not grant a power. The grant of power came from the people.

Now, second, with respect to the plenary powers of the Conven-

tion. Regardless of the construction of the Convention's powers under Chapter 8, the Convention may submit a proposed Constitution in whole or in parts and with alternatives to the whole or to the parts under its plenary powers. It is an established rule of constitutional law that a Constitutional Convention is a constituent assembly representing the sovereign authority of the people which may be limited only by the people themselves. The doctrine that a Legislature may not limit a Constitutional Convention has always been recognized in New Jersey. It was in recognition of this rule of constitutional law that the restrictions limiting the Convention had to stem from the vote of the people.

Chapter 8 itself—

MR. LLOYD: May I interrupt, please, for a moment. Is that a citation from that?

MR. WATSON: No, this is not a legalistic document, but if the Committees desires a memorandum I shall be glad to submit one supporting these statements. But for the purposes of this presentation we took a practical view, and here it comes. This is exactly what happened. . . . Did you want to say something, Mr. Murphy?

MR. MURPHY: No.

MR. WATSON: All right, then let me go on.

Chapter 8 itself recognizes these plenary powers, first, by framing the public question upon which the people voted so as to restrict the Convention only respecting county territorial limits and legislative representation, and second, by the provision in section 13 of Chapter 8, which also was incorporated into the public question, that the Secretary of State should review the proposed Constitution and parts thereof to determine whether the Convention has complied with the county territorial limits restriction and with the legislative representation restriction, and that only upon such certification may the proposed Constitution and parts thereof be submitted to the voters. This provision reads as follows (*reading*):

"* * * and provided further, that the Secretary of State shall review such proposed Constitution and parts thereof to determine whether the Convention has complied with the foregoing restrictions, and that only upon his certification that it has so complied may the proposed Constitution and parts thereof be submitted as aforesaid."

Now, may I interpolate? I have read in the papers that fear has been expressed by some of the delegates that if alternatives to the whole were submitted the Secretary of State might conclude that Chapter 8 were violated and he would look to the Attorney-General for advice, and that might be the basis of litigation. It is none of the Secretary of State's business. Let's follow now.

The voters did not restrict the Convention in any wise concerning the submission of alternatives. Upon the contrary, they delegated to the Convention a broad and sweeping grant of power, that is, to

submit, in whole or in part, a new State Constitution revising, altering or reforming the present Constitution "in such part or parts and in such manner as the Convention shall deem in the public interest." As a safeguard against the possible non-observance of the county territorial limits and the legislative representation restrictions, the Secretary of State was directed to review the proposed Constitution and parts thereof to determine whether the Convention has complied with these restrictions, and only upon his certification that it has so complied may the proposed Constitution and parts thereof be submitted. The Secretary of State was not directed to review the proposed Constitution and parts thereof to determine whether alternatives have or have not been submitted, but to determine solely whether the Convention has complied with the two specified restrictions. The Secretary of State's certification, which is a prerequisite to submission to the voters, does not extend to the manner of submitting alternatives. It extends merely to compliance with these two limitations.

The wording of the public question indicates conclusively that the Legislature contemplated that the Convention would enjoy plenary powers, except for the prohibitions of change in county territorial limits and legislative representation.

I am sorry to say that apparently a paragraph is dropped from this. . . .

You see, Chapter 8, in framing these instructions to the Secretary of State, recognized that these two restrictions were the only prohibitions operating upon the powers of the Convention.

I conclude that the Convention may submit a new Constitution as a whole, accompanied by alternative proposals in such manner that if the proposed Constitution were adopted by the people and one or more of the alternatives were adopted, they would become a part of the new Constitution either under the powers of the Constitution as described by Chapter 8, or under its plenary powers.

CHAIRMAN: Gentlemen, will you ask your questions of Mr. Watson? . . . Mr. Murphy.

MR. MURPHY: May I direct a question to the Attorney-General?

CHAIRMAN: Yes.

MR. VAN RIPER: Of course.

MR. MURPHY: General, on page 3 of Mr. Watson's brief he starts with this language at the bottom of that page: "Fundamentally pertinent is the substance of the question submitted to the voters pursuant to section 13 of the Act," and the language contained therein and in the bottom part of that question, "reforming the present Constitution in such part or parts and in such manner as the Convention shall deem in the public interest." Now, it seems to me, General, that Mr. Watson has made a powerful argument

there. As I followed him, he seemed to say that the people gave us that right, so that if there is any contrary language in the enabling act, that that falls—that we have the right to present this question to the people in November in such manner as the Convention shall deem in the public interest. How do you answer that?

MR. VAN RIPER: Before I answer that, may I say this—

MR. WATSON: May I interrupt for just a minute. I just want to say this. I don't know what this is going to lead to, but I don't want it to be an across-the-table discussion. I don't want to get into any legalistic arguments.

MR. VAN RIPER: I just wanted to elaborate on what Mr. Watson said about our "friendly disagreement." The fact that he and I are in disagreement on some phases of this means simply that two lawyers, one a very good one and the other just trying to do the best he can, are not able to agree. I don't think we are in any different position than the fact that members of the United States Supreme Court vote five to four every day, except that they do it acrimoniously and Mr. Watson and I do not do it acrimoniously. We haven't so far, and I am sure we are not going to as a result of this.

MR. WATSON: May I inject? The Attorney-General did not say which is which.

(Laughter)

MR. VAN RIPER: I am sure that there is no question in anybody's mind but what I referred to you as "a great lawyer."

MR. WATSON: If there is, I want the record to show it.

(Laughter)

MR. VAN RIPER: I think you are, and I have great respect for your intelligence and for your legal judgment, and I always have had.

Mr. Murphy, I answer that this way—by asking a question: What does the word "manner" apply to? Isn't it true that it applies to the "revising, altering and reforming" of the Constitution, the way in which to do it, the things which you put in it, and the things which you take out? Not the matter of the submission of it? Now, that word has been defined by the courts in connection with this very same kind of a proposition.

MR. MURPHY: May I answer you, General?

MR. LLOYD: Is this to be,—I beg your pardon, go ahead.

MR. MURPHY: General, the way I read it is, "Do you favor the holding of a State Constitutional Convention which shall prepare a Constitution for submission in such manner as the Convention shall deem in the public interest?"

MR. VAN RIPER: No, wait a minute. That isn't the way it reads.

MR. MURPHY: That's the way I read it.

MR. VAN RIPER: Prepare for submission of what? Prepare for what? "A new Constitution revising, altering or reforming the present Constitution, in such part and in such manner." Do what "in such manner"? "Revise or alter or reform." Isn't that what it applies to?

MR. MURPHY: I don't think so, General. I think that it applies to that and to submission, also.

MR. VAN RIPER: I see. Well, that's a matter of construction, Mr. Murphy. I can't see how the word "manner" there can apply to anything but the subject matter and the way in which you do it. For instance, you can take two Articles now and comprise them both into one, if you want to, or you can take the one which you have now and expand them into three, if you want to. That is a legal manner of revising all constitutions, but not the manner of submission, because you have here positive, plain and direct language with reference to the manner of submission, contained in section 28 and in 23. Here you are talking about the making of the Constitution, in this section.

MR. MURPHY: You are also, General, talking about the submission, because the question very, very plainly said: "Do you favor the holding of a State Constitutional Convention which shall prepare for submission?" Now, my thought on that is that it was to give to us the widest possible latitude in bringing back this question to the voters in November.

MR. VAN RIPER: All right. Let me ask you this question, Mr. Murphy, will you please? I am doing this by way of trying to reason this thing out, to see if we can't reach some goal that we all want.

That gives to the Convention uncurbed power to submit it in any manner in which it sees fit, is that what you think?

MR. MURPHY: Yes, sir; indeed I do, sir.

MR. VAN RIPER: You think that the Convention can order that the Constitution be submitted in whole and in parts?

MR. MURPHY: To be absolutely consistent, yes. I say that.

MR. VAN RIPER: Do you really think so?

MR. MURPHY: Yes, I do, General.

MR. VAN RIPER: Mr. Watson and I are in agreement on this.

MR. MURPHY: What I am doing is this. I am putting a construction on this vote, and I am not worried about what the Legislature did with the mere wording of the enabling act.

MR. VAN RIPER: But the enabling act is your grant of power from the people.

MR. MURPHY: It is, that is true, but it can't limit us.

MR. WATSON: I just want to inject here for a moment. I am

not going to interrupt, except where I am quoted. The Attorney-General said that we agreed that it can't be submitted as a whole and in parts. Now, that is a play on words. It can be submitted as a whole with alternative parts.

MR. VAN RIPER: With the exception of that. I mean, it is understood from the forepart.

MR. WATSON: Of course, it would be difficult to submit a whole Constitution and parts. It would be contradictory. It wouldn't be practicable.

MR. VAN RIPER: Regardless of that, I thought from your questions, Mr. Watson, I assumed that with the exception of 3, 4, and 6, that we were in agreement on the others.

MR. WATSON: Well, you can submit a whole document with alternative parts, which gets us to the same place.

MR. MURPHY: I have maintained that all along, Mr. Watson—that you could do exactly that.

MR. VAN RIPER: All right. Now, getting away from that point, you say that under this manner, under the terminology here, you just said so, the Constitution can be submitted as a whole and in parts, too. Is that right?

MR. MURPHY: If they would be foolish enough to do it, yes.

MR. LLOYD: Mr. Chairman, may I direct a question to Mr. Watson?

CHAIRMAN: Yes.

MR. WATSON: Surely.

MR. LLOYD: Mr. Watson, I conclude that the gist of your memorandum and your statements is that we, in solving this particular question, rely on paragraph 13 of Chapter 8 of the 1947 laws, which is the paragraph providing the form of question to be submitted. In other words, that we disregard the Legislature's other words as to whether we shall submit it in whole or in parts, or in the alternative.

MR. WATSON: No, that is not my position. I said that section 13, the people's vote, is fundamental. Now, I think that all the provisions of Chapter 8 are consistent with that. The Attorney-General thinks, apparently, that some of the provisions of Chapter 8 are inconsistent with that. I think they are an harmonious whole; that section 13 is fundamental and that these other provisions of the quoted sections . . . May I have this section 2—pardon me, Mr. Montgomery. In section 2 (*reading*):

"The Constitutional Convention shall prepare and agree upon a new Constitution, revising, altering and reforming the present Constitution in such part or parts, and in such manner as the Convention shall deem to be in the public interest."

That is perfectly consistent with it. So, in the same way, section 3 and section 23 are all consistent with section 13.

MR. LLOYD: But if those parts were found to be inconsistent, would you say that paragraph 13 would control?

MR. WATSON: Undoubtedly.

MR. PAUL: Mr. Chairman, may I ask through you, a question of Mr. Watson?

CHAIRMAN: Yes.

MR. PAUL: Your thesis is that the power of this Convention stems from the power granted by the people on public questions which was given here in section 13?

MR. WATSON: That's right.

MR. PAUL: Now, getting back to the question—

MR. WATSON: I would like to elaborate on that thesis, if I may? I can.

MR. PAUL: No, I don't think that will be necessary. I have a very simple question here. The Attorney-General asked you whether you and he were in agreement that you could not submit the document in whole and in parts—that you could not do that. It had to be either in whole or in parts. I call your attention to the wording, a question substantially following the form: "Do you favor the holding of a State Constitutional Convention which shall prepare for submission to the legal voters next November 4th for their adoption or rejection in whole or in parts a new Constitution, revising, etc." Now, in view of that language, which was the language—

MR. WATSON: Are you reading from section 13?

MR. PAUL: I'm reading from section 13. In view of that language, do you have a doubt in your mind as to the possibility of our submitting it both in whole and in parts? Is that not prohibited under this wording?

MR. WATSON: What is the wording?

MR. PAUL: The wording is "in whole or in parts."

CHAIRMAN: "Or"?

MR. WATSON: "In whole *or* in parts."

MR. PAUL: Yes, that is the question, with that wording, if you submit a whole Constitution.

MR. WATSON: I think that under that wording you could submit the whole Constitution.

MR. PAUL: Could you also submit a part? A whole, and could you, also, at the same time submit independent parts?

MR. WATSON: Well, let's not try to define parts. Let's just say "parts."

MR. PAUL: No.

MR. WATSON: You could submit the whole and alternative parts. Something to take the place of some part of the whole.

MR. PAUL: I guess that is your alternative.

MR. WATSON: Yes.

MR. PAUL: What I am trying to do is to get at the basic thing, to get that cleared up. We have assumed in this Committee that the Convention would have to submit either a Constitution as a whole or in parts. Our doubt is as to whether they could submit alternatives to the whole.

The Attorney-General answers that in the negative and you answer it in the affirmative. But the first question is the question whether you can submit a Constitution as a whole—say here's a whole package—and you say now you vote "yes" or "no" on that. Then you say here are four packages over here; you can vote "yes" or "no" on each one of those as well.

MR. WATSON: Yes, the Convention could do that, but it would be impractical to do it because you might well come out of that with conflicting provisions.

MR. PAUL: You might have the identical provisions in your Executive, Legislative and all of the five branches, but you have all that wrapped up in one package here, and you can vote "yes" or "no" on the one package. Then you have five separate packages, each one of which is contained in this, and they vote "yes" or "no" on each one of those. Does that, under your construction—

MR. WATSON: What's he going to say—"yes" or "no" on each of these five questions? Well, you can see its impractical. Suppose there was a majority for the whole Constitution and a majority for some of the wholly independent parts? You'd have the whole Constitution with certain appendages.

MR. PAUL: I'm disturbed over the words "in whole or in parts." I follow your reasoning, Mr. Watson, as to the powers of the Convention being granted by what the people voted on. It got its power from the people, and the power of the people is given in section 13 pretty much in detail, I think.

MR. WATSON: I think that what this means is this—that the Convention may submit a whole Constitution, or it could submit parts of a Constitution. If all or any of the parts were adopted and some were rejected, those that were adopted could become parts of the present Constitution. That's clear, isn't it? In whole or in part, and in such manner. Now I think the Convention may submit a part or parts in such manner that they would be alternatives to provisions of the whole, so that the people would vote, the choice of the people would be between an alternative or a designated provision in the whole.

MR. LLOYD: We have a whole, we have parts, and we have alternatives as three separate—

MR. WATSON: That's right.

MR. LLOYD: In other words, an alternative is not necessarily a part. Am I correct in that?

MR. WATSON: No, it is an alternative to a provision in a part. Take the Judiciary Article, for example. You can present a Judiciary Article with an alternative Chancery provision and if the alternative received the greater number of votes, it would be incorporated into that Judicial section, which is a part.

MR. LLOYD: The alternative is not defined, in your opinion, as a part.

MR. WATSON: It may be. A part may be an alternative or a provision may be an alternative.

MR. LLOYD: An alternative is not necessarily a part.

MR. WATSON: Not necessarily, it may be either. In other words, gentlemen, I'd like to reiterate what I've said—that my view expands the powers of the Convention. Take, with all due respect, the Attorney-General's recent comment on section 13. This fundamental section 13—whether “in such manner” relates to submission or whether it relates merely to revising or reforming. Why read that narrow meaning in this? Why not take the broader meaning? Let's assume that either is arguable. I think it's conclusive that “in such manner” modifies and relates to “submission and revising, altering and reforming.” Why should this Convention go out of its way to limit its own powers? Let's assume the language contemplates both constructions. Take the broader line.

MR. MORONEY: Mr. Watson, as I take it, when you submit an alternative to the whole, you would include in the whole, for example, a Judiciary Article in favor of the retention of Chancery; then your alternative to that would be, do you favor the elimination of Chancery?

MR. WATSON: Well, you couldn't put it that way. The alternative would have to contain certain definite provisions.

MR. MORONEY: Now, let me ask you a question, a very practical question, and it might possibly become a political question, if you will. Which one of those alternatives are you going to include in the whole?

MR. WATSON: That is up to the Convention. The Convention has complete and discretionary power. For instance, suppose, Mr. Moroney, there are a dozen controversial subjects. Are you going to submit all controversial sections to the electorate? If so, the election would become a confused town meeting. You can't do that and you shouldn't do it, because the people haven't given these controversial sections the thought and study that you have. They delegated that power to you, the Convention. They said to you, in effect: “You, ladies and gentlemen of the Convention, you study all the intricacies of this difficult subject; then you present it to us in such a manner as you deem best.” It is your problem to say which one will be submitted and which one will not be submitted as al-

ternatives. Suppose you were to submit an alternative on every controversial subject before you. It would be too complicated. You wouldn't get a practical result. That is your authority; it has been delegated to you. It is your responsibility.

MR. MORONEY: All right, sir. If I may, just one more question. My question deals with your statement with regard to the Secretary of State. You state here that he was solely called upon to find out whether the Convention had followed those two restrictions. However, there is nothing, according to this bill, or the direction of the bill to the Secretary of State, to prevent him from feeling that he has a proper right to determine whether the Convention has followed it so far as the whole or in part is concerned.

MR. WATSON: You can't find in Chapter 8 any such provision. Now, of course, in all—

MR. PAUL: May I quote from that? I think it will clarify it, so that we will know what we're talking about. The provision there is (*reading*):

"The Secretary of State shall forthwith review the proposed Constitution and the several parts thereof to be submitted to the people, and shall within two days find and determine whether the Convention has complied with its instructions as voted by the people."

MR. MORONEY: That, Mr. Watson and Mr. Paul, is my alarm over this thing. That does not prevent the Secretary of State from coming in and determining under section 13 that the Convention must follow the instructions as given, and that is where you have the possibility of legal complications.

CHAIRMAN: May we sort of line up, gentlemen? Different men have asked for the privilege of speaking. Mr. Paul and Mr. Lloyd and even the Chair would like to get in a question once in a while. Are you finished, Mr. Moroney?

MR. MORONEY: I am finished. However, I still have my question before the Chair.

CHAIRMAN: Would anyone like to comment upon Mr. Moroney's question?

MR. MURPHY: I do. I would like to ask the Attorney-General, does he share Mr. Moroney's alarm that the Secretary of State can come to this Convention and say, "Here, this isn't in proper form; you should have submitted it thus and so?"

MR. MORONEY: May I qualify my statement? It wasn't a question of alarm, sir. It was a question of possibility.

MR. MURPHY: I stand corrected.

MR. VAN RIPER: Mr. Murphy, I call your attention to the fact that the Legislature, in its act which was adopted by the people, expressly set the Secretary of State up here as a check against the Convention in certain regards. Probably it was an unusual procedure, but it was done.

MR. MURPHY: What are these regards?

MR. VAN RIPER (*reading*):

"The Secretary of State shall forthwith certify his findings and determination of the Convention"—

MR. MURPHY: What section are you reading?

MR. VAN RIPER: Page 12, section 24, lines 8 to 11 (*reading*):

"The Secretary of State shall forthwith certify his findings and determination of the Convention and upon certification that the proposed document and parts thereof comply with the instructions of the people as aforesaid, and only upon such certification, the Convention may proceed to arrange for submission."

MR. PAUL: I think we have a very important point to clarify here, and I think we are all interested in what was voted by the people. I think the thing really hinges on what was voted by the people. I turn back to section 13. I have this dilemma, and I would like to ask a question for information. I do not recall, I tried to get a copy of the ballot we voted on, but my recollection is that what we voted on is what appears on page 7.

MR. VAN RIPER: That's right. I secured a copy from the Secretary of State's office.

MR. PAUL: Now page 7 is not the same as paragraph 13. Paragraph 13 states a question, but what the people actually voted on apparently—what was voted on according to page 7, was (*reading*):

"Vote for or against such a Constitutional Convention by placing an X or plus in the proper box below and the question is 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."

MR. WATSON: Mr. Paul, that on the ballot followed the previous part—

MR. PAUL: If you'll read 13—"a public question will be submitted to the legal voters by printing in not less than ten-point type, at the head of the ballot, above the names of candidates for the office of delegate, a question in substantially the following form:", then all this appears. Then the box: "For such a Constitutional Convention" or "Against such a Constitutional Convention." Therefore, the only dilemma, as I can see it—maybe I'm wrong; maybe my logic is very poor today—but it seems to me the only question we have to determine is the section involved in the presentation of "in whole or in part."

MR. WATSON: "In whole, or in part, or in such manner." You may submit it in whole, you may submit it in part, and you may submit it in parts with alternatives or without alternatives, in such manner.

MR. PAUL: We are limited in our report to the Convention by what is contained in paragraph 13. I think that is the thing to consider.

CHAIRMAN: I would like to ask Mr. Watson a question about the punctuation contained in paragraph 23 which reads (*reading*):

"The Convention may frame a Constitution to be submitted as a whole to the people for adoption or rejection; or it may frame one or more parts of a Constitution, each to be so submitted to the people that they may adopt or reject any part and, 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 any of the alternatives or reject any or all of them."

I question the semicolon after the words "adoption or rejection," as everything after that follows the semicolon.

MR. WATSON: Now, the question of punctuation. I believe that you're an educator, Mr. Saunders?

CHAIRMAN: Not much of one.

MR. WATSON: Of course, the best punctuation is no punctuation. You know, in Great Britain legal documents are unpunctuated and a master of language doesn't need punctuation. Courts give as much attention to punctuation as they want to, and this Committee and the Convention may do the same thing.

(Off the record discussion about the use of a semicolon, period and the word "also," with respect to paragraph 23)

MR. PAUL: Mr. Chairman, if you accept Mr. Watson's thesis, I don't think you need be troubled by that, because under Mr. Watson's thesis 23 doesn't bind; only 13 binds.

MR. WATSON: I think 23 is consistent with 13. I give weight to the word "also," and "also" supplies the place of a semicolon or a period. This, I think, is an imaginary inconsistency. I see none at all.

MR. CAFIERO: Mr. Watson, I would like to ask a question of you, if I may. I would like to inquire whether or not that alternative could be in a form of an amendment to that which may be contained in the complete draft, or could be in the form of a supplement to that which is contained in the original draft. I have this in mind, if I may clarify my position: Assuming that the gambling clause is the one to which we have reference, could the completed draft have a provision in there that pari-mutuel betting may be permitted? Could an alternative be that—could that be supplemented with the further provision that the Legislature—

MR. WATSON: The alternative may take either form.

MR. CAFIERO: I see; the alternative may take either form.

MR. PAUL: It is now almost 12 o'clock. I suggest to you, sir, if it meets with the approval of the Committee—you have heard Mr. Watson's very interesting, very able exposition. I think we are all pretty well familiar with his view. I was wondering, before we went into our executive session, which we must go into very shortly as we must have a report prepared by 1:00 o'clock, whether the Attorney-General might have anything else to say?

MR. LLOYD: Mr. Attorney-General, may I ask you whether you concur with Mr. Watson in his opinion which he has given here, that in the event of any inconsistency in the other provisions of Chapter 8, that section 13, or paragraph 13, of Chapter 8 would govern, that being the paragraph which lays out the question which was based on the ballot and on which the voters voted at Election Day? In other words, if there are inconsistencies and if we are unable to decide what some of those other provisions mean, or whether they are restrictive, we can always turn to 13, which is what the people voted on, and base our action on the provisions of paragraph 13.

MR. VAN RIPER: Mr. Lloyd, that is a pretty broad question. Generally speaking, I think, yes. Of course, I call your attention again to 13 where it says "manner." I think "manner" applies not to submission, because if they wanted to refer to submission they could have very easily have said "to prepare for submission in any manner in which the Convention sees fit."

MR. LLOYD: Mr. Attorney-General, it's a very broad clause and it is clear as a bell, it seems to me, you favor the holding of a State Constitutional Convention which shall prepare for submission to the legal voters for their adoption or rejection, in whole or in part, a new Constitution, a new State Constitution, revising, altering or reforming the present Constitution in such part or parts, and in such manner, as the Convention shall deem in the public interest. Now, doesn't that give us all outdoors in which to work, practically?

MR. VAN RIPER: I think so as far as the substance of the Constitution is concerned, but not so far as the submission, because I call your attention, sir, to the fact that there is a—

MR. LLOYD: It says in 23 and 28, "a specific method of submission."

MR. PAUL: Your point is that you limit the word "manner" to the subject of submission, or to the subject matter and not the manner of submission.

MR. VAN RIPER: Yes. I feel that the provision clearly states that you can't go beyond that; you can't go beyond the manner.

MR. MURPHY: Mr. Attorney-General, why do they try to limit us in the manner of submission? If, as you have stated, with the exception of this one brake on us about limitation of representation, they have said to us: "Go ahead and change the whole thing, but be careful how you submit it to the people." Why, that doesn't sound reasonable to me.

A further thought that I want to get in there, General. When they say: "Look out now; there is a man over here, the Secretary of State, who by one fell swoop of his hand can throw all of our work out of the window!"—that is incredible. Surely, if we put in some-

thing there about the representations in the counties, the Secretary of State can say: "Just a second, there was a brake there." But if we do anything else, the Secretary of State can put himself over us, the people? Why, that is ascribing to the legislators, Mr. Attorney-General, a mark of intelligence—

MR. VAN RIPER: Who set the Secretary of State up? The people did that.

MR. MURPHY: No, Mr. Attorney-General, they did no such thing. You don't mean, Mr. Attorney-General, that the people meant to do any such thing.

MR. VAN RIPER: I don't know what the people meant to do, but as a matter of fact, I know what they did do.

MR. MURPHY: Well, I say that they did no such thing, but surely you don't think the Legislature or the people would do any such thing?

MR. VAN RIPER: But they did.

MR. MURPHY: But they did not. The language is capable of a meaning which says: "Go ahead and prepare a new Constitution, and there is only one limitation on you, and that is the way we are going to vote. Don't change the county representation."

MR. VAN RIPER: It is in the ballot.

May I ask a question of Mr. Watson which I would like to have some help on? Here is a Constitution as a whole. It has 20 subjects in it, we'll say. Included in it is the subject of taxation, and over here is an alternative on taxation. Now, this thing is submitted as a whole. The alternative folds. It doesn't get a majority vote, so that would be out, then. But the whole got a majority vote. Now, are we agreed that that would become the Constitution of this State? Are we agreed, then, that in the Constitution of the State there would be this tax clause? It would be there, would it not, because the taxpayers had voted to adopt that?

MR. WATSON: Yes.

MR. VAN RIPER: Assuming there were one million votes cast, the minute 500,001 votes were in favor of it, that became the Constitution of the State?

MR. WATSON: Yes.

MR. MURPHY: Mr. Chairman, I want to ask Mr. Watson just one more question. Mr. Watson, suppose that the ballot on this side is the whole document. Now, Senator O'Mara's report, Mr. Watson, is this piece of paper here. But he left out paragraph 2 of Section VII—that's the controversial bingo issue. Is there any doubt, Mr. Watson, that if we submit this entire thing, which includes this Legislative draft, or whatever else you want to call it, and you put this on bingo out here fashioned in such form that the voters will vote on it, that if either "A" or "B" obtains a majority, you then

take, we'll say "A," and push it right in there?

MR. WATSON: You could do that.

MR. MURPHY: No question about that?

MR. WATSON: But a better way to do it, if that is the choice that the voters are to have, would be to put one of these in the main document and the other as an alternative.

MR. MURPHY: I agree with you, except which one should be in here? There would be quite a fight as to which one should go in there.

(Off the record discussions among various members)

MR. WATSON: Who did this: "Do you favor the adoption of the Constitution * * *?"

MR. LLOYD: Mr. Moroney did.

MR. WATSON: Yes or no. If you voted "yes" to Question 1 which is the following alternative proposal, Alternative "A," it's perfectly all right.

MR. VAN RIPER: Doesn't that restrict you from voting on the alternative only, if you voted "yes" on the big question?

MR. WATSON: The Convention may do that.

MR. VAN RIPER: May it?

MR. WATSON: Certainly it may. What's to prevent it?

MR. VAN RIPER: Section 23 says each part to be submitted. It says the people may adopt or reject any part.

MR. WATSON: That's right. You don't have to submit three parts, or ten parts. The Convention may submit such parts as it sees fit. But what they submit the people must be able to adopt or reject.

MR. VAN RIPER: All right. Well, doesn't this question preclude them from doing that?

MR. WATSON: The people may adopt any of the alternatives or reject them.

MR. VAN RIPER: The people must have a chance to vote "yes" or "no" on every question which is on the ballot.

MR. WATSON: Every question which the Convention puts out?

MR. VAN RIPER: Yes. Once it is on the ballot, they must have a chance to vote "yes" or "no."

MR. WATSON: On whatever the Convention puts on the ballot.

MR. VAN RIPER: This wouldn't do that, would it?

MR. WATSON: Yes. It would. This is what the Convention submitted.

MR. VAN RIPER: Wouldn't they be voting "no" on those alternatives by voting "no" to the entire thing?

MR. MURPHY: In effect that would do it, but you have "yes" or "no" on the main question and "yes" or "no" on the alternative. Am I not entitled to vote "yes" or "no" on each one?

MR. WATSON: The most practical way to do, Mr. Murphy, is to put one in there, and vote on the other.

MR. VAN RIPER: Then you have a situation that I think you really ought to consider. You have a situation where you adopt this whole Constitution, and under the act that becomes the Constitution of this State.

MR. WATSON: With or without the alternatives.

MR. VAN RIPER: But the act doesn't say that.

MR. WATSON: You just disregard the last provision of section 23 entirely. Where does the act not say that?

MR. VAN RIPER: Where does it say it?

MR. WATSON: It says it in section 23.

MR. MURPHY: "In such manner."

MR. WATSON: It doesn't contain any prohibition of it. Of course, I won't accept the burden, you see. I won't accept the burden of finding anything in here. I put the burden upon you to find any prohibition of it.

MR. VAN RIPER: I find this—

MR. WATSON: A prohibition?

MR. VAN RIPER: No, not a prohibition. If a Constitution as a whole is submitted and a majority of all votes cast for and against its adoption shall be in favor, then it becomes the Constitution of this State.

MR. WATSON: What section are you reading from?

MR. VAN RIPER: Section 28.

MR. WATSON: Well, there are parts to the Constitution submitted—

MR. VAN RIPER: The same thing applies over there. If a Constitution as a whole is submitted, and a majority vote is in favor of it, it becomes the Constitution.

MR. WATSON: Under your own—hold up your piece of paper there. Now, under that piece of paper, it hasn't been submitted. It has been submitted as a whole with an alternative, so your proposition there is not under this first sentence.

MR. VAN RIPER: Well, I say this can't be done.

MR. WATSON: Why can't it be done?

MR. VAN RIPER: Because you would not then be submitting the Constitution as a whole.

MR. WATSON: You don't have to submit it as a whole. You can submit it as a whole, or in parts with alternatives, under section 23, under the liberal language of the statute.

MR. VAN RIPER: We are right back again.

MR. WATSON: Well, why say the same thing all over again?

CHAIRMAN: About that what you just said. You said it may be submitted as a whole or in parts with alternatives.

MR. WATSON: With alternatives to the parts.

CHAIRMAN: If there are alternatives, do we have to submit it in parts?

MR. WATSON: You may submit it as a whole; you may submit it as a whole with alternatives, or you may submit a part with alternatives.

(Off the record discussion among members)

MR. PAUL: Mr. Chairman, having heard with great pleasure, and thanking Mr. Watson and the Attorney-General for their courtesy and valuable advice, may I move that we go into executive session and prepare our report?

MR. LLOYD: Seconded.

(The Committee went into executive session)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
COMMITTEE ON SUBMISSION
AND ADDRESS TO THE PEOPLE

Tuesday, August 26, 1947

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

PRESENT: Cafiero, Montgomery, Moroney, Murphy, Paul and Saunders.

Chairman Wilbour E. Saunders presided.

CHAIRMAN WILBOUR E. SAUNDERS: I am going to read a letter from Mr. Lloyd:

"It may be impossible for me to present at the Convention on Tuesday, August 26, and realizing that you are anxious to get going on the method of informing the people of the contents of the proposed new Constitution, I am submitting herewith my ideas on the subject:

1. I would not print and mail copies of the new Constitution to every voter.

2. I would distribute copies of the new Constitution to the clerk of every county and municipality in the State for public inspection by all interested persons, who would be informed that copies may be obtained from the Secretary of State by sending a request to him on a penny post-card.

3. The Secretary of State should have 500,000 copies of the new Constitution for distribution to those who request copies.

4. I would distribute copies to every school and public library in the State of New Jersey.

5. I would have prepared by an experienced advertising man, as suggested by Mr. Paul, a readily understandable summary of the new Constitution, pointing out the changes in the old which occur in the new, as suggested by Mr. Herbert Holoran of the Associated Press. I would run this summary as one or a series of paid advertisements in the daily and weekly newspapers of the State at a cost of fifty to fifty-five cents an inch as suggested by Vice-Chancellor Kays. This advertising can be arranged through Mr. Hutchinson of the New Jersey Newspaper Publishers' Association, who was present at the luncheon of the Convention's Publicity Committee.

Sincerely yours,

L/s

FRANCIS V. D. LLOYD"

I would also like to read a letter received from Mr. Enzer of the *Elizabeth Daily Journal*:

"I know your Committee wanted to sound out as much opinion as possible at the meeting arranged by the publicity committee for the newspaper men last week. Therefore, I'm taking the liberty of sending you a further explanation and suggestion re: submission.

1. Although I certainly agree with my friends and colleagues, I still think your Committee cannot afford to say nobody's going to read the full text of a Constitution, why waste money?

That, in my opinion, is a cynicism completely justified by the seeming unconcern of the public to all things governmental.

But I believe the public's apathy is no excuse for the Committee's high-

handedness. It will be a waste of money and paper to send every voter a copy of the new Constitution—besides the necessary paraphrase—but certainly every family should receive a Constitution by mail. It may be ramming government down throats, but then there can be no complaint that the Convention blithely refused to let the people in on a document that will affect their lives very importantly. And, perhaps, there may be some people who will read it. At the least, it may be used by high school students or it may be saved as a souvenir.

The New Jersey Constitution, incidentally, is about 7,000 words long. It's printed in a small pamphlet, as you know, of 34 pages. It's nothing like the 50,000 words of New York or the several hundred pages of Louisiana. Even the amendments to the new document would not increase the number of words to more than 10,000.

If a Constitution is mailed out, one to each family, it should be sent separate from the synopsis and sample ballot. It should go out at least a month before the election.

2. Any synopsis or paraphrase should be as simple and sprightly as the best advertising brains can make it. Same goes for newspaper ads.

If you decide to publish the full text in newspapers, I suggest, as others at the luncheon did, that it be done serially in large type. Avoid the legal ad kind of printing, if possible. Use punch lines and cuts with all ads.

I am enclosing a copy of the first of a series of comparisons I am writing for 'The Elizabeth Journal.' It is not complete, but I believe your Committee and the publicity group should prepare boilerplate similar to this for use by weeklies during September and October.

Sincerely yours,

H. A. ENZER"

I delayed in introducing some people to the Committee: Mr. Kerr from the Secretary of State's office; Mr. Hastings and Mr. Kammerman who are here for purposes that I will explain later on to the members of the Committee.

Now, I suggest that because Mr. Kerr stayed over for us, that we briefly ask him the questions we want answered. If you would be willing, Mr. Kerr, I would like to ask some definite questions and then you will add to them. In the first place, as I understand it, after we have had the Address and Submission and Summary written, we have got to have it written and printed, and we turn it over to you for distribution?

MR. ERNEST KERR: We distribute it, yes.

CHAIRMAN: Do we have responsibility after we have it printed and turned over to you?

MR. KERR: No. You direct us to make distribution of it. We will take care of that end of it.

CHAIRMAN: Then, when we say distribution of the sample ballots, that is all we have to say?

MR. KERR: What we will do is send it to the county clerks and they will put it in with the sample ballots.

CHAIRMAN: If we have a group of people we decide it should be sent to—or the Convention decides it should be sent to, because the Convention has to O. K. what we propose—if we have a group of libraries and schools, how definite do we have to be in giving the directions that the law says we may give to public officials?

MR. KERR: Any direction you give us in making distribution, we will follow.

CHAIRMAN: Suppose we say public schools?

MR. KERR: Of course, that will be a pretty hard proposition. It seems to me what you have to do then is to make distribution to the various municipal clerks and let them make distribution to the schools.

CHAIRMAN: We would have to specify that it would be to municipal clerks to distribute to schools?

MR. KERR: Yes.

CHAIRMAN: We can't say public schools?

MR. KERR: No. We don't know the number of public schools that there might be in New Brunswick or Trenton, and the municipal clerks would know the location and everything.

CHAIRMAN: How about the State Department of Education?

MR. FRANCIS D. MURPHY: That is just an example. We wouldn't send them to public schools, would we?

CHAIRMAN: I don't know.

MR. MURPHY: Well, they don't vote.

CHAIRMAN: Let's not argue whom we would send it to; I'm getting opinions of how we might do it.

MR. KERR: What we do now is make distribution to the county clerks and they in turn distribute them to the municipal clerks.

CHAIRMAN: I think what Mr. Lloyd said in his letter was that every school and public library should receive a copy. Next, suppose that the inclusion of our Address and Summary to the People takes extra postage; where does that expense come from?

MR. KERR: That would have to come out of the State, because that question was raised at the primary. Essex County raised that very question and they submitted a bill to the State for extra postage.

CHAIRMAN: It doesn't come out of us, the Convention?

MR. KERR: Somebody will have to appropriate money. We don't have an appropriation in the office.

MR. MURPHY: You don't have an appropriation?

MR. KERR: No; not when the appropriation was made up for this year, last June or February.

CHAIRMAN: Do they go in a uniform size envelope?

MR. KERR: They could be made uniform, maybe a No. 10 envelope, that size (*indicating*).

CHAIRMAN: Do the ballots go with them?

MR. KERR: Yes.

CHAIRMAN: Always uniform size?

MR. KERR: Yes. A law was passed this year whereby certain counties sent out ballots by stamping the name of the voter on the

back of the ballot without inserting it in the envelope, and sending it that way.

CHAIRMAN: My point is this: One thing about the form in which ours should be printed—if it can be conveniently printed on a form which doesn't have to be folded, it's going to be more attractive.

MR. KERR: What I would do is print it that size (*indicating envelope size*). A small, compact pamphlet and insert it in an envelope of about that size (*indicating No. 10 size envelope*). It would be in booklet form.

CHAIRMAN: About the printing of it. The printing of the Address and Summary, and the printing of the Constitution as far as copies of that must be printed—is that the expense of this Convention or of the State?

MR. KERR: I would say of the State. It would cost about \$600,000 to take care of all the expenses we estimate in connection with printing the Constitution and Address. You will have to take care of all the election boards, the distribution of ballots, the additional postage, the printing of ballots and envelopes. That is a state proposition.

CHAIRMAN: Now, that has me a little buffaloed. Let me be sure that I understand you. That is, after we have the copy ready—and we hope we will have some control over how it is printed—but after that is done, that bill wouldn't come to us, to our Convention?

MR. KERR: I don't know. Of course, there is a difference of opinion among the members of the Convention. Some of the members seem to think it is a state proposition—that the State should pay for that, not out of the Convention expense or appropriation, but additional appropriations. The appropriation for the Convention will not cover the cost of submitting it to the people.

CHAIRMAN: You speak of this expense. May I break it down a little bit in my mind? For example, the man who is printing this, this morning talked about \$25,000 for printing the Constitution and \$15,000 for printing the Address and Summary. I think he is probably very low.

MR. KERR: That is very low.

CHAIRMAN: The difference between his low figure now of a total of \$40,000 and your statement of \$600,000—

MR. KERR: Well, of course, that is made up of postage, the envelopes, the ballots, additional compensation to members of election boards—payment of extra compensation to election boards of \$10 per man, \$150,000. It seems to me that is very low for extra compensation because they give them \$5 for the primary election. This time they will have to insert the Address or, if you send out a copy of the Constitution, they will have the Constitution to put in

these envelopes, and it will take money. If you are going to submit it on paper ballot and not use the machines, there will be an additional ballot to insert in their envelopes and you will have 2,500,000 ballots to print and pay for.

CHAIRMAN: May I say this: Is it safe for us, then, to assume that the only expenses which might need to be taken care of out of the Convention's budget are the actual printing of the Constitution and the actual printing of the Address?

MR. KERR: I don't know, Doctor, for this reason—there is a difference of opinion. Some say (*reading*):

"The sum of \$350,000.00 is hereby appropriated for printing, advertising and publication, for compensation of such clerical and technical personnel as the Convention may require and for the other expenses of the Convention; same to be disbursed by the Treasurer of the State."

The vouchers have to be signed by the President and the Secretary of the Convention.

CHAIRMAN: In another place it says, concerning submission and address, that the Convention may direct state officials to do certain things.

MR. A. J. CAFIERO: That is section 25.

CHAIRMAN: I am just trying to clarify this. We go back and forth, and we've been going back and forth over this a long while now, and we don't get any definitive answer and I don't think that we get one now.

MR. KERR: Of course, that is the interpretation you had. The counsel to the Convention or the Attorney-General might give you an opinion on that, whether the State is to pay for this expense or whether the Convention is to pay for it out of the \$350,000 appropriated.

MR. MURPHY: Mr. Chairman, how is that important now?

CHAIRMAN: It is only important because we have Mr. Kerr with us. I asked him to remain because I felt that this Committee ought to have the chance to ask him these questions. As far as I am concerned, it can be over now if we were certain we had the answers. I am not certain we have.

MR. KERR: Well, of course, it's a difference of opinion as to the interpretation of this act. As I say, we have no appropriation in the Secretary of State's office to pay for publication or distribution, postage, or anything concerning this proposed Constitution.

MR. CAFIERO: It would seem to me, in line with what you have already said, it is perfectly obvious we have no powers of appropriation—that is fundamental—but it would seem to me that we should go to the act itself and in section 25 we find, if I may read the last sentence (*reading*):

"The Convention may make such directions to officials and others, for submission to the people of the Constitution or the part or parts agreed

upon and for notice and publication of the same and of the address, and for the distribution of copies thereof to such persons, places and institutions through the office of the Secretary of State or other persons at such time and in such manner as shall be determined."

It would seem to me, Mr. Chairman, that our function would be to report to the Convention just what we think should be done about the submission of the question and the places wherein the information should be available. The Convention in turn will then direct the Secretary of State and he will take it from there. If he is without funds from that point on, it is their problem. It's their problem to obtain the funds and take other means to carry out the instructions and directives. I don't think there is anything further on that point.

CHAIRMAN: All right, as long as we are running no chance of something not being done.

MR. MURPHY: Mr. Kerr has had a lot of experience, especially with the 1944 situation. Mr. Kerr, are we bound by the terms of the act to send out the interpretive Address with the sample ballot?

MR. KERR: Absolutely.

MR. MURPHY: We may print copies of the Constitution. Well, of course, I assume that the Committee will order some to be printed. Do you think it would be wise to send a copy of the Constitution to each voter?

MR. KERR: I think so, if you send a Summary.

CHAIRMAN: You don't think so if you send a Summary?

MR. KERR: I think it would be.

CHAIRMAN: A copy of the Constitution. That would mean two and a half million copies.

MR. KERR: More than that, if you are going to make distribution to the schools and various organizations, libraries, municipal clerks and people who write in for them. Now, this is what they did in 1944: in order to inform the people of the contents of the revised Constitution the Legislature provided that (*reading*):

"The Secretary of State shall cause such revised Constitution to be published at such time and in such manner and in such arrangement and in such legal newspapers for the publication of official advertisements to be charged at regular subscription rates as shall be determined by the President of the Senate and the Speaker of the Assembly and the Secretary of State. The Secretary of State shall also cause to be delivered to each municipal clerk a number of printed copies of the revised Constitution equal to at least one-tenth the total number of votes cast for Governor in such municipality at the general election in the year 1943 and from time to time thereafter shall cause to be delivered to each municipal clerk additional copies thereof as in the judgment of the President of the Senate, the Speaker of the General Assembly and the Secretary of the State . . ."

MR. MURPHY: Would you think, Mr. Kerr, that that would be sufficient? It seems to me to be a useless expense, a tremendous expense, if we are to send a copy of the proposed Constitution to every voter in the State. For instance, take my own town; there are 10,000

or 12,000 voters in the town of West New York. If we delivered to the municipal clerk, say 1,500 to 2,000 copies of the Constitution, would you think that that would be sufficient number to acquaint the people who are really interested in reading the Constitution?

MR. KERR: Yes.

MR. MURPHY: But, in addition to that, Mr. Kerr, do you mean that we should send a copy of the Constitution by mail to every voter?

MR. KERR: If you send a Summary, I think so, in order that there may be a comparison.

MR. MURPHY: That's going to entail a lot of money.

MR. KERR: You have a letter from one of your members in which he says each voter should get a copy.

CHAIRMAN: No, he says: "I would not mail a copy of the new Constitution to every voter." The opinion to the contrary was given by a newspaper man in connection with a conference held at which I would say there were approximately 20 newspapermen present, and I think there were two only of that 20 who said, "Send them to every voter." The other 18, or approximately 18, said "Don't."

MR. KERR: I think distribution should be made through municipal clerks and county clerks.

CHAIRMAN: Without sending it through the mail?

MR. KERR: Yes. In one of your letters, Doctor, I think it was suggested that one copy be sent to each family, if I remember correctly.

CHAIRMAN: Yes, that was the newspaperman.

MR. J. FRANCIS MORONEY: The only point on that I raise, and I raised it the other day—if you are sending an interpretative statement, what are you sending an interpretative statement of without the thing you are interpreting? I can't see it. It doesn't seem sensible to me to send an interpretative statement of something you don't send.

MR. MURPHY: To carry it a step further, how about sending them a copy of the old Constitution and let them compare it?

MR. MORONEY: I don't think that necessarily follows.

MR. WINSTON PAUL: I asked the Attorney-General, when he was here some days ago, whether there was anything in the act creating this Convention or in any other of the laws of the State which might bear on the subject of our requirements to send a copy of the Constitution to every voter. I want to read you just two paragraphs of a letter bearing on that particular point (*reading*):

"I do not find anything in Chapter 8, P. L. 1947, the act which authorizes the present Constitution, which makes it mandatory for the proposed Constitution to be published in full. The only mandatory requirement in that regard appears to be provisions in section 25 to the effect that the Convention shall prepare an address to the people and further provides

such address should be distributed with the sample ballots for the general election. These two paragraphs would appear to be mandatory on the Convention, although if the Convention refuses to carry them out I question whether or not there is any way you would be compelled to do so, but I do not think the failure to follow these directives will in any way invalidate the election. My recollection, if you ask my opinion, concerning that part of section 25 which is to the effect that the Convention may make such directives to officials and others"—

and so forth. In my judgment, this clearly means the Convention is authorized to direct the Secretary of State, the municipal clerks and others who may be charged with the responsibility thereof, concerning the distribution and publishing of the Summary and/or copies of the Constitution.

CHAIRMAN: What does that mean?

MR. PAUL: That means we can direct them. I understand the Committee on Printing has had this matter under consideration. Have you talked to the Chairman of that Committee?

CHAIRMAN: Yes. I was in the committee meeting. The first opinion was that they didn't have anything to do with it. Now they feel they have to print it and they are prepared to print it, both the Constitution and the Address and the Summary to the People. They are preparing to do it, they want the facts from us and we have to get them fast for them. We need Convention action on our report before they can be told.

Any further questions of Mr. Kerr? . . . We would be very happy to have you stay with us, Mr. Kerr.

MR. KERR: I would like to call your attention to the matter of the members of the election boards' extra compensation. That will be about \$150,000. Then there is postage.

MR. MURPHY: Would you pardon me just a moment? What do you mean by that extra compensation?

MR. KERR: In the primaries each member of the election board received \$5 extra compensation for the constitutional question alone.

MR. MURPHY: That was, Mr. Kerr, because there was a special paper ballot?

MR. KERR: Yes. Well, this time you are going to send out an Address, aren't you?

MR. MURPHY: Yes, we are.

MR. KERR: They have to insert that with the sample ballot, and that causes extra work, extra time for them to do that.

MR. MURPHY: They have to insert the sample ballot in any event, do they not, Mr. Kerr?

MR. KERR: Yes, that is very true, but they also have to insert the Address. Extra time, double working time, and then after that the ballots. Are you going to have a paper ballot all over the whole State or are you going to use voting machines where they have voting machines?

MR. MURPHY: We don't want to decide that now. If the Committee decided to utilize the machines and also to place this constitutional question on the ballots to be used in the general election, and there will be a general election in every county, would your answer be the same then as to expense?

MR. KERR: Yes, I would say so.

MR. MURPHY: What extra work would there be?

MR. KERR: That extra expense of tallying the vote on the question of the adoption of the Constitution—whether it should be adopted or not. It would take just twice as long to do their work in tallying up the votes and everything.

MR. MURPHY: I just wanted to get your idea as to how you arrived at that figure.

MR. KERR: Postage will be a big item.

MR. MORONEY: I would like to get back on that other question. Every time we have a public question, do the election boards get additional revenue?

MR. KERR: No, not every time. I think you will find that they will look forward to receiving extra compensation for extra work.

MR. CAFIERO: Mr. Chairman, how can we possibly authorize the payment of monies to any members of election boards?

CHAIRMAN: We have nothing to do with that.

MR. KERR: Your postage is another large item. It depends on the length of the Constitution—that is, the size of it—and the size of the Address. Six lines mean additional postage. Then there is the question of the size of the envelope. As I stated, just this last session of the Legislature they passed an act which allowed sample ballots to be sent out with the name stamped on the back, instead of putting them in an envelope. Now, under your present plans you will have to send them out in envelopes, extra large envelopes. The counties, you see, make up a budget of what their election expenses will be. This additional expense will have to be borne by the State. The question of your paper and this question of envelopes will be serious. Envelopes are very scarce and very hard to get, and these things will have to be settled so that we can go to work immediately, not next month or two weeks from now, but it will have to be settled so we know what we are doing.

CHAIRMAN: We'll try. We are expected to propose the day after tomorrow very definitely to the Convention just what is to be printed and sent out and what is to be on the ballot.

MR. KERR: I am just bringing this to your attention because I want you to look forward to it. Some of these expenses don't show on the surface.

CHAIRMAN: You can't get it any sooner than that. Would that be soon enough? . . . Any further questions to ask of Mr. Kerr?

MR. CAFIERO: No. We are very grateful to him for his suggestions, however.

CHAIRMAN: Thank you, Mr. Kerr.

Now, take the case of two other men who are with us so that they may be released if they want to go. At a recent meeting you allowed me to go ahead and secure a copywriter. The two gentlemen here are to give opinions and information concerning it. One is Mr. Hastings and the other is Mr. Kammerman. Perhaps, after they have retired, I will give you a little more history of their being here, which they won't object to, but I thought I would first like to have this Committee meet the two men and have the two men ask the Committee questions about the job we want done. The statement has been made to them that we want someone to prepare the copy and suggest formal printing for the Address and Summary to the People. But we don't want it as the 1944 one was, which they both stated was not an attractive job. I think we will be glad to have either of you speak and give us any ideas you may have or ask us for information you may want.

MR. MURPHY: Mr. Chairman. Before either of you gentlemen start, may I ask you a question? I just want to see if I have this thing straight. We are expected to file a report—indeed, I think that we should by Thursday of this week—to the Convention.

CHAIRMAN: Correct.

MR. MURPHY: That report will not include the interpretative Address, is that correct?

CHAIRMAN: The understanding of the Convention—of course some of these things have to be done without having a full committee meeting—is this: that we will have a report on everything except that we will not have the Address and Summary ready for them. They cannot anticipate this. That as far as our recommendations concerning the printing of the Constitution, the form of the ballot and all other things, we will be fully prepared to make a final report on Thursday with our recommendations. We have a big job.

MR. MURPHY: I understand that.

CHAIRMAN: This is previous to that only for this reason—that we have to get somebody started.

MR. MURPHY: I understand. So, in other words, we have from Thursday until the next time the Convention meets, and that would appear to be Friday of the week following. At that time, however, we will have to have the Address fully completed. Isn't that correct?

CHAIRMAN: May I make a further statement? When they brought up the chairmen of Committees for meetings, it was to discuss whether that was possible. The only objection that was raised was by me. I said, "Suppose that we come to that meeting on September 12 and we have an Address and Summary to the People—we

have to place before them word for word, gentlemen—and that you just tear it apart. What are you going to do?” They said that they will simply send the draft back and stay here until they get it the way we want it. Suppose they don’t like what we bring up, anyway. So the suggestion has been made that we prepare this not for readiness on September 12, but that we prepare it for readiness on September 3 or 4, preferably the 4th; that we present it then to the chairmen of all the Committees, and we thought then we would get the major objections and get over anything that somebody brings up.

MR. MURPHY: Now I understand.

CHAIRMAN: Does that seem acceptable to all of you?

COMMITTEE MEMBERS: Yes.

MR. CAFIERO: The only point I wanted to make, Mr. Chairman, as I read section 25—the first part of it says that we may, if it is deemed appropriate, prepare an interpretive statement to be placed thereon, or we may dispense with such statement notwithstanding any other requirement.

CHAIRMAN: That’s on the ballot.

MR. CAFIERO: Yes.

CHAIRMAN: You are talking about the ballots?

MR. CAFIERO: Yes.

CHAIRMAN: Let’s put the ballots aside, if we may.

Now, Mr. Hastings and Mr. Kammerman—either one of you. These men have only an hour or two to have this idea presented to them. I don’t know how clear it is. They may want to give us ideas they have in their minds to check as to what we are thinking of. Either one of you.

MR. ARTHUR C. KAMMERMAN: I might say that I am here representing Mr. Charles Brower, who is executive vice-president in charge of all creative services. He couldn’t be here this afternoon and asked me to come down and find out what it was you gentlemen wanted and get as much information as I could and report back to him tonight when we are expected, if asked to do so, to go to work on this job. I have had the privilege of talking to a number of you this morning and at lunch about your problems, and the sales point of view, from an advertising point of view, seems comparatively simple.

The major job is going to be, as I see it now, to get information in time to permit us to digest it a little bit, and put it in acceptable form. As I suggested to one of you, you have two major jobs. The first thing to do is to find out, to get straight, what changes were made, and why they were made; to try and bring them out in such a way that the person who reads them will know what difference it will make to him and the fellow on College Avenue in his everyday

life. The second problem we have is to anticipate, if we can, where our opposition is going to come from.

The 1944 Constitution got licked rather unexpectedly as a result of something we haven't been able to find out about, or it was a last-minute campaign. It got licked, as I understand it, by three main groups who misinterpreted or were misinformed about certain basic elements in the Constitution. The things that they objected to may or may not have been true. Anyhow, they got impressions that their privileges as citizens were going to be affected and they voted against it. As I understand it, the opposition was composed of a labor group, a farmer group and a religious group.

After we find out what we have done here, why we have done it, the other thing we ought to do is to sit down as realistically as we can—we are all politicians here to a certain degree, and know something about how people think—and figure out who is going to object to it and what kind of objections will be raised. Can we anticipate some of those? Can we in our interpretive statement make positive statements that may kill the kind of objections that we have had before? We come right down and face it. Is Hague going to be for or against this Constitution? Do we know that? If he is going to be for it, O.K.; that's one thing we don't have to worry about. If he is going to be against it, we have to sit down and realistically appraise just why he is going to be against it, what kind of arguments may be used for or against it, what can we do in advance to spike it.

I was privileged to sit in on the voting this afternoon and the gentleman who proposed that amendment to the amendment on the cemetery associations made a very good point. I can see one phase of your interpretive statement already written and that has a little heading and it says "Tax Exemptions," and then the heading says: "Veterans are exempt to a certain degree, all religious organizations are exempt, cemetery associations are exempt, all exemptions are as previous." All right, that's one thing that everybody, or practically everybody, will acknowledge about this Constitution. How is it going to affect taxation, my taxation? There will be a good many questions in this Constitution that, I imagine, will be important from a legal point of view but will not be important from the point of view of the average man who doesn't pay a heck of a lot of attention to how he is governed anyhow.

After we find out what we have done, try to pick out the things that are most directly and immediately going to affect the lives of the voters and tell them those things quickly and fast. Then, let's review every argument that we heard against the last Constitution. I didn't hear them all; some of you gentlemen must know what they are; we ought to have a list of them. We ought to find out what the

objections to the last Constitution were; we ought to get them and sit down and say which or any of these can be used against this Constitution. Which of them ought we to spike in our interpretive statement when we send it out?

This is basically a plan of campaign, a conception of the job. Whether it should be done with illustrations, the physical form of it, how long it will be—and the shorter it is the better—are questions that cannot be decided until we see the material we have. The letters that have been read from those two gentlemen show to my mind a good deal of sound basic thinking. The question of a newspaper campaign, that is a question that may or may not come up before this body. The question of sending out a copy of the Constitution to every family in the State—well, let's be realistic about it; there are two ways of looking at it. It has one positive value in that nobody can say we are trying to hide anything. It has two negatives: It is going to cost a heck of a lot of money which might be spent in other forms of promotion; second, let's be realistic about it, there will not be one person in 1,000 who will read the darned thing. We will be very lucky if we can get a nice, sprightly, interpretive statement of this thing that people will read, and if we can get people to read that, or the majority of people to read it, we will have done as much as we can possibly expect to accomplish.

The question came up as to whether to send them to schools or not. School children don't vote, no. But school children—my own are still very young—school children probably are more interested in public affairs than a good many adults. I see a great deal of value, directly and indirectly, to sending this interpretive statement with a copy of the Constitution to at least all your senior high schools, junior colleges and colleges, perhaps with a request to the principal that it be discussed in the political science class. Every high school in this State has by law, I think, a senior course in American history and problems of American democracy.

When I went to high school that course was presented primarily in terms of projects and problems. There is no finer project or problem for the first couple of weeks in American history and problems of American democracy than a study of what this Constitutional Convention has done; the differences between the two Constitutions; why it was done and how it was carried out. Now, if we could set this up through the State Department of Education and through your high schools, and maybe through your colleges—that might be a little harder—but through your colleges for the first week or two weeks of school in the problems of American democracy class, I assure you that although those high school seniors might not vote, the impact of what they had learned would be carried home and they might very probably stir their parents. You know, if you have chil-

dren, they come home and ask the damndest questions and first thing you know you have to find out some of the answers in self defense.

Aside from that, without knowing a little bit more about what you've got, that's the way I see the problem just now. The first thing: Let's get the facts, let's analyze the background of the previous history, let's learn as much as we can from our previous attempt; then put out the best, most concise, peppiest, most readable interpretative statement we can. Then let's promote that to as many agencies as we can. Let's defer the question of sending two and a half million copies of the Constitution until we decide whether or not that is necessary from a public relations point of view.

CHAIRMAN: That question cannot be deferred. We have to recommend some action on that question.

MR. KAMMERMAN: All right.

MR. MURPHY: Would your answer to that be any different if you knew that there was not going to be organized opposition to this?

MR. KAMMERMAN: That is exactly the question I was going to ask you.

MR. MURPHY: It seems certain now that both of the major parties are going to advocate the adoption of this Constitution. Wouldn't that change your answer?

MR. KAMMERMAN: It would, but what I was just going to say was this: The only excuse that I could see for printing two and half million copies of this thing and trying to put one in every voter's hand would be if it is the opinion of this Committee that in an attempt to defeat the Constitution there might be a group which would start a whispering campaign and say, "Look, they wouldn't even let you see the darned thing. You don't get any copies of it, do you? You better get one and see what they're doing. They're trying to put something over on you." Now, that kind of a campaign will go over 100 per cent with people who would never read the first page of the darned thing if it were sent to them. Now, if that is so, I would say we'd have to do it as a matter of public relations. If that is not so, in your opinion—you would have to make a judgment there—you would not have to. I personally am sticking my neck out on it. I think we will do very, very well if we get this interpretative statement in the public's hands and get half of the people in this State to go half way through it, no matter how well it is written, or no matter if you put Varga girls on every page.

MR. MURPHY: Did you hear the Chairman's statement before, that we had about 20 newspapermen present at a luncheon and two, only two, of the newspapermen thought that we would have to send

a copy of the Constitution to every voter in the State; yet 18 thought not?

MR. KAMMERMAN: Well, newspaper men are realists about what people will read. That makes sense. We have no illusions in this business about what people read and what they don't read. It may interest you to know that if we write an ad, a national ad, in a newspaper about a subject, about something which women are interested in getting, something that they have to get to live, like coffee or meat or something like that, and we run it with the best illustration we can and get the best position we can get—in a high-traffic page in a newspaper and with short copy, with maybe 100 words—if we then get 12 per cent of the women readers of that newspaper to read that ad, we think we are doing very well and so does our client.

MR. CAFIERO: Mr. Chairman, you know we are obliged under the law to send an Address to the People, or a Summary or Explanation of the proposed Constitution, together with a sample ballot. That will not be sent to the voters until probably ten days before election. I assume that that which you have reference to is something which should be sent to them sooner than that, so that they will have ample time to digest it and be adequately informed.

MR. KAMMERMAN: That is theoretically the practical way to do it. Actually, if you send it to them too soon before the election, they will look at it and if it's something that isn't too important and isn't imminent, they will tuck it away and maybe they will read it and maybe they won't.

You gentlemen have been working at this very hard for a number of months and this Constitutional Convention is very important to you, but I would venture to say that 98 per cent of the voters in this State know we have a Constitutional Convention and they figure they are going to vote on it; but they have no great, or at least they haven't been aroused at the moment to any great, particular, selfish reason why they should be interested in the State Constitution. I would suggest that ten days before is plenty of time. Now there again, you are up against this other proposition: Are we going to have opposition?

The campaign that licked the 1944 Constitutional Convention, as you may painfully remember, started about two days before election, and the campaign which defeated the high school site which we were trying to get over in Westfield started the day of the election, and we had had a nice campaign going for three weeks and thought we had everything in the bag, and the day of the election a pamphlet was distributed which turned enough votes to defeat our project. So I would say that if you do it, unless you are having a planned campaign of newspaper ads, announcements, etc., I

would say a week or maybe two weeks, maybe two or three insertions to end on the day of election, would be enough. If you are just going to send the one piece out, I think sending it out at the normal time with the normal ballot, and maybe a notice in the newspapers of some kind on the day of election, will be sufficient.

But again, it comes down basically to what kind of a campaign you expect. The gentleman who just left made the point. Are we going to have a fight? Or is it this: Are we fairly sure that we won't have a fight? Our strategy will be entirely different in either case. Or, do we want to go ahead and do certain things and make sure, in case we do have a fight?

CHAIRMAN: May I make the observation that beyond the printing of this pamphlet, I think that is perhaps something that we could omit now, for the reason that it is in the hands of the Public Relations Committee. That is, our only job covers the important ones that we have listed. As far as I'm concerned, the public relations campaign is already on and going at full blast on the radio, in the newspapers, and everything else, and the preview is certain. We are now talking with these men about a single pamphlet. I wonder if you want to talk with us and we'll give you a chance for any further questions you may have, Mr. Kammerman.

MR. KAMMERMAN: All right. Thank you. If you will hold them we will certainly be glad to ask them.

CHAIRMAN: Mr. Hastings?

MR. GEORGE HASTINGS: Mr. Chairman and members of the Committee:

My name is George Hastings, and I live in New York. I have had some experience in public life in Washington, Albany and in New York, and am engaged in public relations work. I have attended many legislatures and the Constitutional Convention in New York and I must say that I have been profoundly interested in listening to your entire session today and have learned a great deal from the meeting this afternoon.

Two things struck me particularly in listening to the debate to which I came entirely cold. I heard the phrase two or three times, "democracy in action," and it seemed to me that that was a fine description of the service which you gentlemen were giving. I didn't hear any politics and it seemed to me that that was a very nice, hopeful, helpful thing and a very sound approach. I did think that I detected a good deal of the spirit of give and take and of co-operation, and not everybody sticking out to the last ditch for his own view, but listening to the other man and then accepting the views of the majority. I refer to that a little at length in order to say that my conception of your so-called Address to the People should be key-noted in that same key. I would go along with a

great deal of what Mr. Kammerman has said, except that I would confine my remarks primarily to pen work, the so-called Address, interpretive Address, and Mr. Kammerman has gone farther along and has discussed the campaign. Now, the Address to the People is one thing, the campaign is another, and I confine my remarks primarily to the Address.

Now, my conception of that is that it should be simple, clear, plain, factual and descriptive. I would be just a shade afraid of anticipating a lot of objections that may not be made and trying to answer them in advance in the pamphlet. It seems to me that the best argument for your Constitution will be your Constitution and the Address explaining what that is, and I would stick very closely to that. I wouldn't be quite as critical as some people I have heard out there—if it was factual, if it was clear, if it were legal, it was not a thing the average reader would read with any great glee, nor would understand too readily. He would have to study it before he could understand things of that kind.

Now, it seems to me that your Address should be non-partisan and non-political, and should stress the point that the work of this Convention has been so, and that this is a report of the stewardship of your Convention to the people of this State, and that this is a summary of what you have been aiming at, of what you have been trying to do and what you have finally agreed upon. I believe that your entire Constitution, in printed form, should be available to every resident of New Jersey who wants it. I do not believe that you should mail it to every individual. The experience everywhere is that a very small proportion of the people would read a formal document like that. But you have to meet the opposition of the person who says, "Well, you are not telling us in detail what you did. You are just giving us your interpretation of what you did." Therefore, the Constitution ought to be available to everybody who wants it and especially anybody who asks for it, and it ought to be in a great many public places where it could be available, but I would not think of mailing that to your entire population.

CHAIRMAN: We are all agreed on that.

MR. HASTINGS: It has been my experience, in running public campaigns of information on bond issues and referenda and elections in New York State, that your opposition is not so hard, oftentimes, to overcome, as you know. You have to do an educational job in order to kindle your apathy and your indifference to it. My conception of a good Address would be a straightforward, straight-from-the-shoulder, plain English, newspaper style report that people would understand and read, but that would be legally and factually accurate so that it would meet with the approval of all the members of your Convention.

CHAIRMAN: Thank you very much, Mr. Hastings.

Now, Mr. Kammerman, do you want to ask some questions?

MR. KAMMERMAN: I come to the question of anticipating possible objections. I have been directing publicity in the United Campaign in my home town for the last four years and we always have solicitors who come up and say, "Well, somebody asked me this," or "Somebody said that. Can't we publish a retraction and say that that isn't true?" I have always said that unless it's a major issue we don't do that, because if you have one person who thought up that objection, and we publish it, that will remind four or five hundred other people who otherwise would never have thought of that point, of something that I might object to also and they will not accept our answer.

What I meant by anticipating objections is this: I have been told and I heard at the time that it was the opposition of three groups that helped kill that last revision. They were the farmer, the labor and the religious groups. Now, what we should do here is see what those objections were, whether they were true or not, what were those things to which they objected, and then we should make sure that in this pamphlet—not in a defensive manner, but in a positive manner—we make it clear that the objections which were raised to the last one are taken care of in this one. That's not anticipating, that's afterthought. There were objections raised which killed the last one. We should find out what they were and we should then analyze them. We should make sure those objections are made clear and that this Constitution overcomes such objections.

That was one point that was made today. They made that amendment. They said it was some question about exemptions which set one group of people against this Constitution. Well, if that is true, we should make very sure that in our pamphlet that is one of the questions answered, one of the things that is made clear. When I say anticipating objections, I mean just that.

Going down the line, what was the objection of the farmers to the last Constitution? I don't know. Some of you gentlemen ought to be able to tell me. If we know what that objection was and if that has been taken care of, we should make sure that a statement to that effect—not in a defensive manner, but in a positive manner—is made in that pamphlet.

If the religious groups were objecting to certain statements last time—and I know they were, although I don't know what the objections were; I'm not clear on all of them—we should make sure that in this pamphlet we have such objections answered, so at least they cannot raise the same objection that they did the last time. Now, I understand labor was against it. Why was labor against the Constitution? What was their objection? Why did they kill it?

Do we know that?

CHAIRMAN: Mr. Paul, do you want to answer that?

MR. PAUL: Yes, Mr. Chairman, because I think the point you make is well taken. I'm not objecting to that. I think you ought to go into the writing of the pamphlet.

MR. KAMMERMAN: All right, let's come up to something else. Hague is probably the single man who is most responsible for killing the last thing; I understand he was the source of a good deal of the opposition to it. Whether he was right in that, I don't know. I have been told that he is against it because he wants to retain the old form of Courts of Chancery where he has an opportunity to nominate and put in the judges. I have been told that by a judge. Maybe he was prejudiced. But I mean, there are things like that. Is Hague going to be against this one? Do we know that? Is he going to be for or against this thing?

MR. MURPHY: You want an answer to that?

MR. KAMMERMAN: Yes.

MR. MURPHY: I'm a brave man. No, he won't be against this one. He will be in favor of this one.

MR. KAMMERMAN: He will?

MR. MURPHY: Surely.

MR. CAFIERO: You want to clarify it?

MR. MURPHY: No. He's going to be in favor of this. I wouldn't qualify it. He's definitely going to be in favor of this Constitution.

MR. KAMMERMAN: Well, if Hague is in favor of the Constitution, then it seems our major problem has been overcome, looking at it realistically. *

MR. MURPHY: That's what I tried to point out to you before, sir.

MR. KAMMERMAN: Another thing we have to be prepared for is, will he change his mind at the last minute, or won't he? Do we know that?

MR. MURPHY: No, nobody knows that, sir.

MR. KAMMERMAN: Then, theoretically, we have to be prepared against a repetition of the same argument that killed the last Constitution and we should try to look through it or have someone look at it with a fairly careful eye and say, "Now, are there any jokers, or are there any things in here that might be picked up and distorted or misinterpreted, or used to start the same kind of a campaign that killed the last one?" If there are possibilities of obscure phrases and if there are things in there that might be construed to affect a lot of people, we should look at them very carefully. We ought to look at it from the point, let's consider, of what's going to lick this Constitution. If anything does, it will be the same thing that licked the last one, which is a combination of various

pressure groups. Now, who are the pressure groups in this State who are affected by this Constitution? Are their interests protected, or aren't they? Now, if we have protected the interests of most of these people, let's put it down in black and white as to how we have protected them so we have those things nailed and fenced. That's what I mean by anticipating.

MR. HASTINGS: May I ask a question, Mr. Chairman? Mr. Kammerman's remarks bring us right down to solid earth here. How long is this interpretive Address going to be? Your trick, of course, is to write it in a length that people can read it, and I have a great fear that if, in addition to your experience and your summary of what the things are point by point, you try to hark back to the objections of the other, you are going not only into a questionable thing to do, but you are also going to run into a solution that is going to be beyond you. I would like first, if I were going to have anything to do with it, to have you gentlemen settle, and I am sure Mr. Kammerman feels the same way, how long an Address you want?

MR. KAMMERMAN: If I may answer that as one man to another, I don't think any man can say how long that thing is going to be until we see what we have to write. Now, there is an old story about the big argument about long copy *versus* short copy. The story, and I have said it myself, is that generally short copy gets better reading. However, we still have full-page advertisements which are practically all text. You have probably seen them—"Do you make these mistakes in English?"; that thing is practically all text, and was written 20 years or so ago. It still pulls—one of the best ads we ever wrote. We come back to the story that copy should be like a woman's dress, long enough to cover the subject but short enough to be interesting.

Now, the length of this thing depends on how much we have to say and how much of that is interesting. If we can take the items, if we can take this and write it in such a way that a person will be interested as he goes along—not as this legal document which makes no attempt, as near as I can figure out, to re-rate what has been done to the selfish interest of the person—if we can keep those things coming along, like tax exemptions, veterans, the Governor's term of office, etc., the length will have to depend—

MR. MURPHY: We don't know what the length will be. I don't want to seem to do all the discussing, but I think maybe we have covered the field.

CHAIRMAN: I was going to ask you people to vote later in the day in view of the fact the Committee must make some decision. You gentlemen have been very kind and we are very grateful to you for spending the day here.

MR. KAMMERMAN: Thank you very much, Mr. Chairman.

MR. HASTINGS: Thank you very much.

CHAIRMAN: While we are waiting, Mr. Hutchinson is here. Mr. Hutchinson, will you make a statement about the cost of newspaper advertising? We have listened to the advice of newspapermen. Now that phase comes into the picture, and I don't think we have had any recommendations on it at all.

MR. FRANK B. HUTCHINSON: Mr. Chairman, I always get "mike fright" for some reason or other. In the first place, I agree with what a lot of you people say. I want to mention the fact that apathy might kill it. Newspaper advertising would cover two of the things that have been discussed here. One is it would make it available—everyone would know that if they didn't read it they could have read it and they see it in the newspapers; and the thing that was discussed before was to run it in six installments so they could see it six times. They would also know that they had ample opportunity to read it. The other is that the newspapermen that you talked to, Doctor, were probably reporters.

CHAIRMAN: No. Newspaper owners.

MR. HUTCHINSON: Well, I was at a meeting yesterday of the Board of Directors of the New Jersey Press Association and I didn't see anybody against it. They feel the power of advertising. Compared with distributing a copy to every person, which would probably run a quarter of a million dollars, you could get it to all of them on the installment plan, so they could read it, for something like \$70,000 or \$75,000.

CHAIRMAN: Assuming that they all take a newspaper?

MR. HUTCHINSON: I think if anyone doesn't take a newspaper, they wouldn't read it anyway.

MR. MURPHY: \$70,000 or \$75,000?

MR. HUTCHINSON: My recommendation would be that you send it to them in plate form so there is no error through reproduction; it is well prepared and it is uniform. That would cost maybe another five. I don't have the figures. It would not be under another five.

MR. JOHN L. MONTGOMERY: What about the foreign language newspapers? You newspapermen do not cover foreign language newspapers?

MR. HUTCHINSON: No, sir.

(General discussion)

CHAIRMAN: I want to tell you about these two men. First of all, I contacted Marts and Lundy. Marts, formerly president of Bucknell, suggested Mr. Hastings, who was here. Mr. Hastings has had some dealing with President Hoover as Extension Director of

the White House Child Protection Conference and Administrative Assistant to President Hoover, and is doing public relations work. I also contacted Batten, Barton, Durstine & Osborn, Inc., who I suppose have probably the biggest reputation of anybody in New York City, and their Mr. Brower, who is their executive vice-president, sent down this young man with whom he will work. It is now your choice of the two. You have had a chance to see the two men. I assume either of them is a capable man for the job. One man is an older, more conservative man. The young man is pretty smart in many ways. He dared to question me as to why we had somebody else down here, and that made me mad and I said, "Just a minute," because it happens that Mr. Brower is on the board of trustees of Rutgers.

MR. MURPHY: Doctor, you want us to make a choice, is that it? Do you want it in the form of a motion?

CHAIRMAN: I think it would be wise that we express an opinion.

MR. PAUL: Mr. Saunders was designated to select the man. I am perfectly satisfied.

CHAIRMAN: I am asking for help.

MR. MURPHY: I think Mr. Hastings is a very fine man. He has good ideas. I think he would be the man to tackle it.

MR. MORONEY: I also go along with Mr. Murphy. He gave us the most constructive statement. The other man was more interested in the campaign than he seemed to be in the interpretive statement itself. I think Mr. Hastings would be the more logical of the two.

MR. MONTGOMERY: I am going to take the other fellow for the reason he has connections Hastings doesn't have.

MR. PAUL: I think the other fellow would dress it up more for us. I think the dressing up would be better by the first man than by the second man.

MR. CAFIERO: I haven't really given it any serious thought. I don't know anything about the matter. I like both men.

CHAIRMAN: Frankly, I am much more attracted to Mr. Hastings as a gentleman than I am to the younger man who is pretty smart aleck. On the other hand, Mr. Hastings is an independent person and on his own, whereas the other fellow is the representative of a group which will work and back him on the strength of the entire staff. It is one of the most competent firms in its field. Incidentally, Mr. Brower says they will not want to make any money on this and will do it as far as possible for service, and he thinks about \$300 or \$400 would probably cover the cost of it. I asked the other man and he hadn't the faintest idea about it, but he thought maybe \$500 and personal expenses. Both men are prepared

at the drop of a hat to spend all the time that we want them to give. My opinion is upon the former.

MR. MURPHY: Doctor, you have our opinion. You go right ahead and use your own judgment.

MR. CAFIERO: Whom do you prefer, Doctor? Kammerman?

CHAIRMAN: Yes. I prefer him.

MR. MURPHY: That's Barton's outfit, you know, the best known advertisers. . . . What's next on the agenda, Doctor?

CHAIRMAN: What do you want for a program? Do you want to work right through today?

MR. MURPHY: Would you permit a suggestion? We are now at the point of dictating our report. Now, first of all, are you going to write this report yourself?

CHAIRMAN: I hope not.

MR. MURPHY: You hope not. I was hoping that you would. Only for this reason, Doctor—as I see the report, there are three or four very, very simple questions to be answered. Our report, Doctor, could be limited to two pages; for instance, "To the delegates to the Convention: The Committee on Submission and Address have recommended the following: 1. We recommend the utilization of machines in counties that have machines and the regular general election ballot for the rest of the counties. In other words, we do not recommend a statewide paper ballot." Now, I don't say that is the opinion of these gentlemen here.

MR. PAUL: Let's take them up, one by one.

MR. MURPHY: Yes, that's the way I mean. Take No. 1 and get that out of the way. There are only three or four of them.

MR. MONTGOMERY: Get your No. 1 out of the way before you get No. 2.

MR. MURPHY: Doctor, do you agree with me? Answer those four questions and then, I am sure, you can draw your report in half an hour. I'm not trying to pass the buck.

MR. PAUL: I second Mr. Murphy's proposal.

CHAIRMAN: Now wait a minute; this reads "machines"—

MR. MURPHY: Let's have that read back.

STENOGRAPHER (*reading*):

"1. We recommend the utilization of machines in counties that have machines and the regular general election ballot for the rest of the counties. In other words, we do not recommend a state-wide paper ballot."

CHAIRMAN: We are agreed.

MR. CAFIERO: May I make this modification? Where there are any public questions to be submitted, that we recommend that our question be placed at the top of the ballot and other questions placed at the bottom of the ballot, and that our question be plainly marked that it is a public question upon the constitutional revision

in large, bold type, so that it can be set apart from any local question.

MR. MURPHY: Mr. Chairman, that's excellent, and if there is no objection to it—

CHAIRMAN: You let me try to word it.

MR. MURPHY: Yes; fine. That it is to be placed at the top of the general election ballot and on the machines, especially on the machines. It is to be designated "Constitutional Question." Do you have that, Doctor? On the first point?

CHAIRMAN: I may have to write this without the benefit of the stenographer's report.

1. I have machines where the counties use them and on the machines it is to be designated the "Constitutional Question."

2. It is to go on the regular ballot in counties using the paper ballot and that there is to be no state-wide paper ballot, and where it is put on the paper ballot it is to go on the top of the paper ballot, and other local questions at the bottom.

MR. CAFIERO: And further designated as the "Constitutional Question."

MR. MURPHY: On the machines, Doctor, designated on the machines. I agree with that, that the second question is the exact wording of the question, as Judge Cafiero said.

MR. PAUL: Before we get into that, may I raise this question? Should we first recommend that the document be submitted as a whole rather than in parts? It's a matter of logical procedure that that should be No. 1.

MR. MURPHY: I think that should be No. 1, Mr. Paul. I think you are right.

CHAIRMAN: All agreed?

COMMITTEE MEMBERS: Yes.

MR. CAFIERO: With reference to Judge Lloyd, who isn't here, he wrote me a letter, special delivery, in which he stated (*reading*):

"Due to matters beyond my control, it is quite possible that I will not be able to get to the Convention on Tuesday, August 26. I am, therefore, enclosing herewith for your consideration a suggested draft of the question to be submitted to the people. I have taken this largely from paragraph 13 of Chapter 8 of 1947 Laws and used the form of public question set forth in paragraph 13 as a sort of guide.

With best wishes, I am,

Sincerely yours,

FRANCIS V. D. LLOYD"

Now, I have here to submit or to distribute to the members present the question as propounded by Judge Lloyd. It differs from mine in some respects, but I don't mean to say that I in any sense question the validity or the legality of the question as framed by Judge Lloyd. I have only this objection to it, and I am sorry that he is not here in order that I might discuss it with him—that the words don't particularly appeal to me, even though they are legally

apt. They are just like, in my opinion—and I say this respectfully—striking the wrong key on a musical instrument. I have prepared something which I think more clearly sets forth the question which is really to be considered by the people. In a minute or two I will distribute to each of you a copy so that you might have both of them before you.

(Distributes copies)

CHAIRMAN: This puts the question in the form of the law that set it up, doesn't it?

MR. CAFIERO: Well, it refers to the section of the statute. You will notice on the last part of it, I put the question in the form *(reading)*:

"Shall the Revised Constitution for the State prepared and agreed upon by the Delegates of the Constitutional Convention be approved and ratified?"

They vote "Yes" or "No." This morning, while the Attorney-General was in the room, I managed to have his attention for a few moments, and I submitted this to him. He looked it over and he fully approved of it. The only suggestion he gave me, and I think it has substantial merit, is to use the words "as a whole." I was troubled as to just where it might be used to the best advantage without attempting to confuse the question. It would seem to me that it possibly could be placed on the third line after the word "upon."

CHAIRMAN: Do we have to have that "as a whole"? Let us make this statement as simple and as brief as possible.

MR. MURPHY: Do I understand that this is yours, and this is Judge Lloyd's. I wonder if we could agree on one thing? We certainly are within our rights, are we not, in putting this question at the top of the ballot here—is that right?

MR. CAFIERO: I might further explain the source of the information from which the question was propounded, and that was from the 1944 statute which authorized the submission of the question on the ballot at that time. I have obtained from the Secretary of State's office such a ballot and you may inspect it, if you wish. I might say, at this time, that Mr. Murphy worked with me in the preparation of this matter several mornings ago and what is here is not necessarily my own thought but is with his valued assistance.

CHAIRMAN: The first two paragraphs on your report here, Judge Cafiero, are merely explanatory, aren't they?

MR. CAFIERO: They're not perfect directives. "The Secretary of State shall arrange"—

CHAIRMAN: They're not to be in our report to the Convention.

MR. CAFIERO: You remember the draft you submitted, Mr.

Chairman, in which you set forth five items?

CHAIRMAN: That's right.

MR. MURPHY: That's correct, Doctor. Judge Cafiero's statement, in my opinion, should be contained in your report, starting with "The Secretary of State"—

CHAIRMAN: That is, "We recommend that the Secretary of State"—

MR. MURPHY: That is correct.

CHAIRMAN: Is the second paragraph another recommendation?

MR. MURPHY: I think that is surplusage, is it not, Judge?

MR. CAFIERO: Do you have it there?

CHAIRMAN: Would it go on the ballot?

MR. CAFIERO: No, the only matter that goes on the ballot there shall be printed on the top.

MR. MURPHY: Answer the Doctor's question, Judge.

MR. CAFIERO: "The people of the State may, at a general election"—what about that? Does that stay in or out?

MR. MURPHY: That may be in the report but not necessarily on the ballot.

CHAIRMAN: Does it need to be in the report?

MR. CAFIERO: I would think so; it would tend to explain the first paragraph. Let's read it together. (*Reading*):

"The Secretary of State shall arrange for the submission of the public question set forth in this certification in accordance with the provisions of Title 19 of the Revised Statutes for the submission to the people of public questions to be voted upon by the voters of the entire State and as may be provided therein.

The people of the State may at the general election in the year one thousand nine hundred and forty-seven decide upon the approval and ratification or rejection, as a whole, of said Revised Constitution for the State in the following manner:"

MR. CAFIERO: I think that is prefatory material and should be contained in our report.

MR. MURPHY: Judge, couldn't we get to the main question? The official ballot shall contain the following language:—

MR. CAFIERO: Yes. "There shall be printed at the top the following:". Then we go on with that material which, if you please, gentlemen, is the same as the state public question voted upon which immediately precedes the box section.

MR. MURPHY: Do you see that, Doctor—(*showing language used on the 1944 ballot*)—this exact language here? Does anybody have any objection to that language?

MR. MORONEY: In other words, it has been adapted to this purpose.

CHAIRMAN: Yes.

MR. CAFIERO: "Are you in favor of the approval and ratification as a whole"—

CHAIRMAN: I like yours better than Judge Lloyd's because his is more technical.

MR. CAFIERO: —“of the revised Constitution for the State prepared and agreed upon”—

MR. MURPHY: Now, “prepared and agreed upon”—

MR. CAFIERO: That's language of the statute.

MR. MURPHY: “Agreed upon.” Judge, why did you put in the word “prepared”?

MR. CAFIERO: Well, the Constitution was prepared by this Convention.

MR. MURPHY: You wouldn't use the word “framed”?

MR. CAFIERO: No, I wouldn't.

MR. MURPHY: All right, “prepared and agreed upon by the delegates to the Constitutional Convention held in the year one thousand nine hundred and forty-seven.” . . .

(Discussion off the record)

MR. PAUL: Why not say, “Agreed upon by the Constitutional Convention”?

MR. MURPHY: I would be inclined to agree with Mr. Paul, if you have no pride of authorship. Do you see that there?

MR. CAFIERO: Strike out the words, “by the delegates.”

MR. MURPHY: Do you think it is necessary to say here, “held in the year one thousand nine hundred and forty-seven”?

MR. CAFIERO: No, I mentioned that to the Attorney-General. I said, “Do you think we ought to put that in there?” And he said, “No, I don't see why you should.”

MR. MURPHY: I think it should come out, if there is no objection.

MR. CAFIERO: I don't have that in here, this is different. Oh, you mean at the top? Yes, strike that out.

MR. MURPHY: You are reading the explanatory statement. “Mark a cross (X) or a plus (+) in the square at the left of the words ‘Yes,’ and if you are in favor of its rejection, as a whole, mark a cross (X) or a plus (+) in the square to the left of the word ‘No.’” I think that's pretty plain, isn't it? Doctor, would you tell us, then, how you have that now?

CHAIRMAN: In the third line I have crossed out the words, “the delegates to,” and in the next line from beginning with “held” through “1947.”

MR. CAFIERO: That all comes out.

MR. MURPHY: Yes. Now, Doctor, I think we ought to find out how the gentlemen feel on that and if there is any objection to that language. For myself there is none.

MR. PAUL: I think it is swell.

MR. MORONEY: The only thing I can't get clear in my mind is the second paragraph. I don't seem able to tie that in.

MR. PAUL: The second paragraph?

MR. CAFIERO: That is just the report of our Chairman to the Convention, and that doesn't go on the ballot.

MR. MORONEY: I understand that fully, but I can't seem to tie it in with the first one.

MR. MURPHY: I thought it was surplus, but it does have a purpose. If the Doctor wants it—

CHAIRMAN: I am trying to see where it fits in with our recommendations. The first recommendation we want to make should start, "We recommend"—our Committee—"that the Secretary of State . . ." You see? Now, I'd leave out the next, because in a separate recommendation which precedes this we are going to recommend that the vote be on the Constitution as a whole rather than in parts. It would seem to me to be clearer to leave that out.

MR. MURPHY: I think that paragraph should be deleted.

MR. MORONEY: To go just a little further than that, as long as this is part of the report, after "herein," perhaps I'm off on punctuation here, Doctor, but you'll have to excuse me—"and that the question be submitted in the following form."

MR. PAUL: I can help you out by beginning paragraph 3 and saying, "We recommend that the question be printed at the top of each official ballot."

MR. MURPHY: "We recommend that there shall be printed at the top of each ballot."

CHAIRMAN: Paragraph 1 is to start "We recommend that the Secretary of State . . ."

MR. MURPHY: That's right.

CHAIRMAN: "We recommend that there shall be printed at the top of each ballot the following:". Then we put down our recommendations. This is going to be mimeographed after the Convention delegates have agreed on it?

MR. MURPHY: That is correct.

MR. MORONEY: That's right.

MR. CAFIERO: I think the last words in the first paragraph might just as well be deleted, "and as may be provided herein. . . ."

MR. MURPHY: Yes, "the entire State." Doctor?

MR. PAUL: You refer here to Title 19?

MR. CAFIERO: That covers the general election laws of the State.

MR. MURPHY: The Secretary of State must be guided by Title 19.

MR. PAUL: Pardon me one second. Shouldn't we refer then to

Chapter 8, Public Laws of 1947? You are lawyers, but I raise the question because we are also operating under that chapter.

MR. MURPHY: No, we're not operating under that chapter here. Now you're in the election laws.

MR. CAFIERO: I think I can answer that question for you.

MR. MONTGOMERY: Mr. Chairman, I wonder if you would be willing to break up the paragraph that is going on the ballot. It is my feeling that it is too solid. I like the language, but not the punctuation and paragraphing.

(Discussion that when the paragraph was printed on the ballot it would be arranged in a spreadout fashion)

MR. CAFIERO: May I call your attention to the ballot used in 1944?

CHAIRMAN: Gentlemen, we have decided that our report shall include first, the statement recommending that they vote on it as a whole; secondly, concerning the manner of voting—all that we went through about machines and ballots; thirdly, the wording of the question. Now, number 4, the interpretive statement.

MR. MURPHY: We didn't get down to the box.

MR. PAUL: I suggest you delete the words "by the delegates" in the box; just leave "Constitutional Convention."

MR. MURPHY: Let's read it for a moment. Should we keep the word "revised" in there, or should it read *(reading)*:

"shall the Constitution for the State prepared and agreed upon by the Constitutional Convention be approved and ratified?"

MR. CAFIERO: I would be disposed to retaining the word "delegates."

MR. MURPHY: Is it a revision, Judge?

MR. CAFIERO: Yes, I think so.

MR. PAUL: Absolutely.

MR. MURPHY: The word "revision"—Doctor, can you help us there?

CHAIRMAN: "Revision" means a rewriting; that is what it means.

MR. MURPHY: I have no objection to it.

CHAIRMAN: We have a new Constitution; that's what it really is.

MR. MURPHY: What do you think, Judge?

CHAIRMAN: If you feel that that designates it as a new Constitution.

MR. PAUL: No objection to using the word "new," but I think Judge Cafiero is right—we should have some adjective before the word to designate either "revision" or "new." I have no objection to saying the "new Constitution."

MR. MURPHY: I wouldn't like that word, Mr. Paul. Do you think it has to have some word in front of it instead of saying "Constitution for the State prepared and agreed upon by the Constitutional Convention"?

MR. MONTGOMERY: I guess it's all right as it is.

MR. MURPHY: All right, let's go on. Doctor, if you want to summarize? . . .

MR. CAFIERO: Before we go any further—while we are giving instructions to the Secretary of State as to what he should do, would not the matter follow in the same report that he should include the Submission and Address to the People that will later be supplied?

MR. MURPHY: We're not up to that yet. Do you mean to designate that as the next step?

MR. CAFIERO: No, only as regards the instructions which will be given to the Secretary of State.

(Discussion off the record)

CHAIRMAN: Put that aside now.

MR. MURPHY: What is the next point?

CHAIRMAN: The next one concerns itself with the printing of the Constitution.

MR. MURPHY: All right. The only way, Doctor, to bring this to a head is for someone to make a suggestion to be voted upon. I want to go on record as saying I am not in favor of printing a copy of the Constitution which shall be sent to every voter of the State. If I have been advised correctly, that would mean printing 2½ million copies, and then in addition to that, you would have to have possibly another half million copies to supply requests from individuals, other states, libraries, and what not. Now, that would entail the spending of a great deal of money. I think that the manner in which the 1944 distribution was handled was very good. In other words, if you decide to send out the Constitution to a municipality, you can base it upon the number of people who voted for Governor or some other office during a recent election. In other words, to be more explicit, if in my own community there are 12,000 voters, I think that if we send enough copies of the Constitution to cover ten per cent of the number of voters in such municipality, to be distributed through the mayor's office and public libraries, that it will be sufficient.

MR. PAUL: I move that the recommendation of this Committee to the Convention is *(reading)*:

"That copies of the document shall not be printed for distribution to each and every voter, but that 350,000 copies be printed for distribution on a state-wide basis to certain municipalities, county clerks, libraries and such other sources of public distribution and information as the committee may determine."

MR. CAFIERO: I second that motion.

MR. MURPHY: 350,000 copies?

MR. PAUL: Yes.

CHAIRMAN: I understand 500,000 were obtained of the one previous, and they still have oodles of them. . . . Will you let me phrase that again?

MR. MORONEY: May I be put on record as opposed to that? I favor sending a copy to each voter with a copy of the interpretive statement.

CHAIRMAN: All right.

MR. CAFIERO: I was originally of the opinion that it would be well to give the proposed draft, as completed by the Convention, as wide a circulation as possible and that copies should be furnished to each voter and to anyone else who manifested the slightest interest. After listening to others, I have come to the firm opinion that no one is being deprived of familiarizing himself with the contents of the draft and that it would be a waste of money to vote for an attempt to circulate the completed document in the hands of each registered voter. But if an interpretive statement were given which would be fully informative, and the people informed through every possible source that copies are available to them and that all they need to do is to apply at these convenient strategic points where they can be obtained, I think we will have fully accomplished our purpose. There is no attempt to conceal or withhold the document from anyone, but then I think we should not just unnecessarily spend the money and throw them away. I am of the opinion that Dr. Paul expressed.

CHAIRMAN: How about you, Mr. Montgomery?

MR. MONTGOMERY: I am with Dr. Paul.

MR. PAUL: Just plain citizen.

CHAIRMAN: Mr. Moroney has expressed his opinion, so we'll ask that Mr. Moroney's contrary vote be recorded. Now I want to go on to something else. I think we have to definitely recommend that the Secretary of State distribute these, and my question was directed to this end that we must be very explicit.

MR. MURPHY: I agree with you, Doctor.

MR. MORONEY: I thought, Doctor, that the public schools might possibly be covered if you were to send copies to superintendents of schools.

CHAIRMAN: Let's get a list. Suppose we put it all down.

MR. MURPHY: May I make a suggestion? A party told me that he found that whenever you distributed literature of this nature, the most responsible person to send it to in a municipality is the mayor—send it to the mayor's office. What would you gentlemen think of that?

MR. MONTGOMERY: Most of us don't know who our mayor is.

MR. CAFIERO: I think the gentleman who would be most likely to see that they were delivered would be the municipal clerk.

MR. MONTGOMERY: I agree with that.

CHAIRMAN: Now, do we want it in this form? The Committee recommends that *(reading)*:

"The Secretary of State be instructed by the Convention to send copies to certain people whom we will list for distribution to those requesting it."

Is that the form? Now, mayors have been suggested . . .

(Other suggestions made were county clerks, county libraries, superintendents of schools, county election boards, county superintendents of elections, mayors, city clerks, libraries)

CHAIRMAN: Anybody else?

MR. MURPHY: Now, does this recommendation have to be specific? I mean, of the 350,000 copies distribute 300,000 and retain—

MR. PAUL: My motion made very careful distinction because the next question I intended to raise was, "Who is going to print and pay for them?" Now I address myself to the principle; we would not send copies to every registered voter but would print 350,000 copies and get the widest possible distribution.

CHAIRMAN: All right, state-wide basis.

MR. PAUL: The next question is, "Who prints and pays for them?"

CHAIRMAN: We are not through with the other step. Don't leave me in the lurch now. We have the power—that is, the Convention has the power—to direct to whom it shall be distributed. You can't just say distribute it.

MR. MONTGOMERY: As a matter of form, Mr. Chairman, should there not be certain designated state officials?

MR. MURPHY: I was just going to mention that point to you, Mr. Chairman.

CHAIRMAN: State officials? Who?

MR. PAUL: Secretary of State. Last year a great many letters came to the Secretary of State, so it should be publicly announced that copies can be obtained from the Secretary of State.

CHAIRMAN: That is, he is to send out copies to all those we direct him to.

MR. PAUL: He should be instructed to definitely send out copies of the document to all those requesting them.

MR. CAFIERO: I think Mr. Paul has already mentioned that all literature should carry upon it some little statement to the effect that copies of the constitutional draft can be obtained by writing to

the Secretary of State. I think there should be one central office. I think it will add dignity to the document.

MR. PAUL: That was done in 1944.

MR. CAFIERO: It should be continued.

MR. MURPHY: To whom are these to be sent? That's what he wants to know.

CHAIRMAN: We will also recommend that the Secretary of State send copies to all who ask for them. You are all agreed we should direct the Secretary of State to send out copies. What other state officials do you want to include?

MR. CAFIERO: It seems to me that it would be almost impossible for us today, in a hurried few minutes, to attempt to list everybody to whom this document should be submitted. Don't you think that if we sent it to the Secretary of State and have him place it in all state offices where he feels the document might serve a useful purpose—

CHAIRMAN: May I interrupt? Are we going to keep on? It looks like we can get finished tonight if you want to. Do you want to do that or do you want to come back tomorrow?

MR. MURPHY: Let's stay here and keep on.

CHAIRMAN: State offices, is that what you want?

MR. MURPHY: Just as has been stated downstairs several times, we may fail to include someone who would be most deserving of receiving it, and it would certainly be an oversight on our part—

CHAIRMAN: I didn't get the beginning, I'm sorry.

MR. MURPHY: I am fearful, Doctor, that we might neglect to include someone who would be most deserving of receiving copies by this hurried method. I was going to suggest that we give them to the Secretary of State and instruct him to place it in such places where it will serve a useful purpose. The statute itself states that each member of the Legislature should receive a copy, and I don't know how many others. There is a custodian of public records and there are many valuable offices in which this draft can have a useful purpose. I don't know the names of half of them and I don't suppose any man here knows them.

CHAIRMAN: We recommend that they be placed in such state offices.

MR. MORONEY: We are talking only of the distribution of copies for public consumption.

MR. PAUL: Don't forget that your Committee on Public Relations and Information will distribute a lot of them.

MR. MORONEY: You can follow it through, Doctor, from the State right down to the municipal level: the Secretary of State's Department, Department of Education and public libraries; in your county set-up, your county clerk, and two associations there; and

down to the municipal level the same thing, the municipal clerk and your library and your education—so you follow it in the same level all the way through. This is educational information and certainly should be disseminated.

CHAIRMAN: What is below the city level?

MR. CAFIERO: Boroughs and townships. Clerks of all cities, boroughs and townships.

CHAIRMAN: Could we limit or do it in any way by saying this should be distributed to clerks, libraries, superintendents of schools, superintendents of elections, boards of elections, the heads of organizations, and that this should be on the county, city and—

MR. CAFIERO: State, county and municipal.

CHAIRMAN: Don't we want to get down to some of the lower—

MR. CAFIERO: That's as far as you can go.

CHAIRMAN: State, county and municipal levels.

MR. CAFIERO: Cities, towns, boroughs and townships.

CHAIRMAN: I think we should get down to No. 4, the printing of the Constitution. No. 5 has to do with newspaper advertising.

MR. PAUL: No. 5 has to do with our recommendation as to who is going to print this and pay for it.

CHAIRMAN: I think that is part of No. 4.

MR. PAUL: I am trying to make it easier for the Convention. If anybody objects to—

MR. MURPHY: It doesn't make any difference.

MR. PAUL: The recommendation is "that the Secretary of State be instructed to have 350,000 copies printed."

CHAIRMAN: We already have a recommendation that copies are not to be sent to every voter but that they print 350,000 copies to be distributed on a state-wide basis.

MR. CAFIERO: Cost and expense?

MR. MURPHY: Let's not quibble.

CHAIRMAN: That the State print and distribute at the State's expense?

MR. PAUL: Its own expense.

MR. MURPHY: No. 6, Doctor, what are you going to say here?

CHAIRMAN: Newspaper advertising.

(General discussion)

MR. PAUL: Speaking about the Address and Submission to the People, I haven't made up my mind about that and I don't know that it should be an obligation of this Convention to print the Summary.

MR. CAFIERO: I think you can find justification in the act.

MR. PAUL: I think so, too. I think it is a little bit different. I just raised that point.

CHAIRMAN: What do you want to do about newspapers? This came late. We have this man's 75—

MR. PAUL: I'm strongly opposed to newspaper advertisements. I went through that in the 1944 campaign, and I think it was an awful waste of money. I think the newspapers will print the results of this Convention as news. They will print brief analyses such as this (*exhibits newspaper clipping*). And I think that that will do more than a lot of newspaper advertisements. I have talked to the owners of a number of newspapers and they are in a good, prosperous condition now and don't need that sort of revenue.

MR. MURPHY: Let's get on with the question, Doctor.

MR. PAUL: I make a motion that we make no recommendation for newspaper advertising.

CHAIRMAN: I think we had better have everything understood.

MR. CAFIERO: You feel, Mr. Paul, that you won't be antagonizing the newspapers?

MR. PAUL: I absolutely do.

MR. MURPHY: How about reporters, Doctor?

MR. CAFIERO: Reporters don't care.

MR. MURPHY: I will go along with Mr. Paul on that.

CHAIRMAN: May I give this report to Mr. Kerney and Mr. McMurray, both of whom are newspaper publishers, and ask them to advise us whether it is a pure waste of money?

MR. MURPHY: Let's get on with the question.

MR. MORONEY: I second Mr. Paul's motion.

Mr. Chairman, I think Mr. Lloyd suggested it be published in the newspapers. Don't you think it should be recorded at this point?

MR. MONTGOMERY: This grew out of a suggestion made at a luncheon the other day. It is \$70,000, gentlemen. Of course, \$70,000 is a steep price to pay for a lot of good public relations in newspapers between now and election, but I don't think newspapers would be that small.

MR. MURPHY: What is the next point, Doctor?

CHAIRMAN: The next point is the Address to the People—what should be contained in our report.

MR. MURPHY: That we recommend the hiring of Mr. "X"—whomever you decide.

CHAIRMAN: We have the power and it is voted. I recommend that if we say anything about it we should simply report that we acted upon it, and that we have hired a copywriter.

MR. MONTGOMERY: I would like to have it left out entirely.

MR. MURPHY: Then you will prepare an interpretive Address?

CHAIRMAN: And read it at the next meeting.

MR. MURPHY: Anybody have a copy of the Rules?

CHAIRMAN: We'd better not miss anything.

(General discussion regarding Rule 71)

MR. CAFIERO: Shall we decide that it shall not be necessary—or deem it inadvisable to place an interpretive statement upon the ballot?

MR. MURPHY: Yes, I would go along with that. Doctor, that would have to be another recommendation in your report.

CHAIRMAN: It seems to me that our interpretative statement will do.

MR. MURPHY: Oh no, that constitutes the instructions to the voter, Doctor.

CHAIRMAN: Wait a minute—no interpretative statement.

MR. MURPHY: Yes, you can use the last words of Rule 74, Doctor. "It is not deemed appropriate that an interpretive statement shall be placed thereon. . . ."

CHAIRMAN: In other words, the last words of Rule 74?

MR. CAFIERO: Yes, that's right.

Now, the other Rule which concerns us is Rule 75 *(reading)*:

"There shall also be referred to the Committee on Submission and Address to the People the preparation of an Address to the People consisting of a summary and explanation of the proposed Constitution or the part or parts agreed upon and the making of such directions, if any, to officials and others for submission to the people of the Constitution or the part or parts agreed upon and for notice and publication of the same * * *."

MR. MURPHY: Judge, that was a little bit too fast. That is an important section. Do you mind reading that over?

MR. PAUL: Why not start at the top of page 31.

MR. MURPHY: Perhaps you had better start re-reading Rule 75 from the beginning.

MR. CAFIERO: I'll start at the beginning. *(Reading)*:

"There shall also be referred to the Committee on Submission and Address to the People the preparation of an Address to the People consisting of a summary and explanation of the proposed Constitution or the part or parts agreed upon and the making of such directions, if any, to officials and others for submission to the people of the Constitution * * *."

MR. MURPHY: Now, Judge, would you hold it right there? We certainly do that, do we not, Doctor, when we say here: "We recommend that the Secretary of State shall arrange. . . ." Is that right?

MR. CAFIERO: That's right.

MR. MURPHY: All right. I just wanted to make sure of that.

MR. CAFIERO: Then we go on with this language *(reading)*:

"* * * and for notice and publication of the same * * *."

MR. MURPHY: I didn't catch that, Judge.

MR. CAFIERO: "* * * and for notice and publication of the same * * *."

We've got to submit directions for notice and publication of the same. That's for notice and publication of the directions. Isn't that as you read it?

MR. MURPHY: I didn't catch that, Judge. Notice and publication of the directions?

MR. CAFIERO (*reading*):

"* * * and the making of such directions, if any, to officials and others for submission to the people of the Constitution or the part or parts agreed upon and for notice and publication of the same * * *."

MR. MURPHY: Now, that means of the Constitution, does it not, Judge?

CHAIRMAN: I think it does refer to the Constitution.

MR. PAUL: That was the way I originally interpreted it.

CHAIRMAN: May I attempt to be an English scholar, gentlemen? I think if you will notice, this is all applied to one sentence (*reading*):

"* * * the preparation of an Address and the making of directions to officials and others and publication of the same * * *."

MR. MURPHY: Gentlemen, may I read this to you? This will help you, I'm sure. I'm reading now from the enabling act, section 25. (*Reading*):

"The Convention may make such directions to officials and others for the submission to the people of the Constitution or the part or parts agreed upon and for notice and publication of the same and of the Address and for the distribution of copies thereof to such persons, places and institutions through the office of the Secretary of State * * *."

MR. CAFIERO: I think Mr. Moroney has the answer.

MR. MORONEY: I think you have to give people notice of public questions, don't you?

MR. MURPHY: That's right, Mr. Moroney. This is what it says (*reading*):

"The Convention may direct that its provisions, or any of them for notice, publication or distribution shall be in lieu of any other such provisions of law relating to public questions."

CHAIRMAN: What does this mean we have to do?

MR. PAUL: In other words, I think that the use of the words "notice and publication of same," both in the act and in the Rules, has reference to possible legal requirements. Therefore, we should instruct the Secretary of State to give such notice and publication as may be required by law.

MR. CAFIERO: Very good.

CHAIRMAN: Due and proper notice of what?

MR. PAUL: Due and proper notice of the Constitution as may be required by law.

MR. PAUL: Get Mr. Moroney's suggestion in there.

CHAIRMAN (*reading*):

"We recommend that the Secretary of State be instructed to give due

and proper notice and publication of the question to be submitted in accordance with the law."

MR. PAUL: You said the members of this Convention? It should be: "and the submission of same as may be required by law."

MR. MORONEY: How does that read again now?

CHAIRMAN (*reading*):

"We recommend that the Secretary of State be instructed to give due and proper notice and publication of the question and the submission of same as may be required by law."

MR. MORONEY: I think "publication of the Constitution, the question and submission of same as may be required by law."

MR. MONTGOMERY: There is one thing I don't like in there. You say: "We recommend." Is that right?

MR. PAUL: Yes, that's right. This is the report, that's all—the report to the Convention.

MR. CAFIERO: There is one other word because we stopped with "publication of the same," and it goes on with "and of the address." Now, while we are instructing the Secretary of State to give due and legal notice of publication of the question and the Constitution, we should also direct him to distribute it.

MR. MURPHY: That is next Friday, Judge. Isn't that anticipatory?

MR. CAFIERO: Can't we say in our instruction that the Address be furnished. The Convention knows that something further is forthcoming.

MR. MURPHY: If you want to put it in, Judge, I have no objection. The only point I make is that next Friday we are going to have an additional report you know, and then we could say to the ladies and gentlemen of the Convention: "The following is the interpretative Address which we recommend to be sent with the sample ballot." Then we will set forth the agenda, at least. Then you could go on with your recommendations.

MR. PAUL: I think we have to wait until we have that wrapped up. It will take us only a minute.

MR. CAFIERO: I don't see where it will do any good to withhold this.

MR. PAUL: Everybody knows that it is in the law.

MR. MONTGOMERY: Then it will be his duty to distribute the Address when it is prepared.

CHAIRMAN: Then all you have to do is to attach the Address.

MR. CAFIERO: Then it will read:

"* * * distribution of copies thereof to such persons, places and institutions through the office of the Secretary of State or other persons and at such times and in such manner as may seem desirable and proper, and the said committee shall prepare such an address and report the same and shall report also as to the other matters so referred to it by the Governor."

MR. MORONEY: When do you want him to prepare this?

MR. CAFIERO: The statute provides for a certain time, the same time as the sample ballot.

MR. MURPHY: It should be forthwith and should be included as soon as available.

CHAIRMAN: Gentlemen, in my opinion, we have taken care of the rest of the enabling act. That is why I asked Judge Cafiero to read the rules.

MR. PAUL: The Convention meets on Thursday. When does it meet again after that?

MR. MURPHY: The next week, toward the latter part of the week. Someone suggested Friday. However, that is not definite. It can be Thursday. It has also been suggested that we meet at the War Memorial Building. Whenever it is going to be, we are going to present the document to the Governor.

I move that we adjourn.

MR. PAUL: I second the motion.

(The session adjourned at 5:30 p. m.)

INDEX
to
VOLUMES III, IV AND V

The material in this Index covers all of Volumes III, IV and V. It supplements the Index for Volumes I and II, which is included at the end of Volume II. Because of the nature of the material, and the fact that it was deemed expedient to publish Volume IV ahead of Volume III, each volume is a unit in itself, so far as page numbers are concerned. Hence, in this Index, when reference is made to page IV 735, it refers to page 735 of Volume IV.

For the sake of convenience, the following is the location of each Committee's proceedings in the three volumes included in this Index:

Committee on Rights, Privileges, Amendments and
Miscellaneous Provisions, Volume III, pages 1 to
468 (referred to as Committee on Rights, etc.)

Committee on the Legislative, Volume III, pages 469 to
899

Committee on Executive, Militia and Civil Officers, Vol-
ume V, pages 1 to 531 (referred to as Committee on
Executive, etc.)

Committee on the Judiciary, Volume IV, pages 1 to 755

Committee on Taxation and Finance, Volume V, pages
533 to 908

Committee on Submission and Address to the People,
Volume V, pages 909-995 (referred to as Committee
on Submission and Address)

SIDNEY GOLDMANN,

HERMAN CRYSTAL,

—Editors

A

- ABBOTTS, WILLIAM, memorandum to Committee on the Judiciary on Law Reporter, IV 735
- ABSENTEE VOTING (see *Voting, Absentee*)
- ACTING GOVERNOR (see *Governor, Acting*)
- ADDRESS TO THE PEOPLE, Committee on Submission and Address on, V 991-995
- AD INTERIM APPOINTMENTS (see *Governor, Appointments, ad interim*)
- ADJUTANT GENERAL, Morgan F. Larson on, V 3-28
- ADMINISTRATIVE AGENCIES, Committee on Executive, etc., votes provision for regulation of, V 407
- ADMINISTRATIVE AGENCIES, REGULATIONS, PUBLICATION, Thomas H. Reed on, V 365-383; N. J. Committee for Constitutional Revision on, V 500-514
- ADMINISTRATIVE DIRECTOR OF THE COURTS, Robert C. Hendrickson on, IV 5-16; Judge Learned Hand on, IV 415-426; George W. C. McCarter on, IV 490-495, IV 584-593; Morgan R. Seiffert on, IV 514-517; Joseph A. Davis on, IV 541-552; N. J. League of Women Voters on, IV 595-598
- ADMINISTRATIVE MANAGER (see *State Administrative Manager*)
- ADVISORY MASTERS, George W. C. McCarter on, IV 490-495
- AFRO-AMERICAN ASSEMBLY OF NEW JERSEY, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732
- AGRICULTURE, DEPARTMENT OF, George Tierney on, V 142-150; memorandum of N. J. Farm Bureau and N. J. State Grange on, to Committee on Executive, etc., V 491
- AGRICULTURE, SECRETARY OF, N. J. State Farmers Union Council on method of selection, III 415; N. J. State Federated Egg Producers Cooperative Association, Inc. on method of selection, III 416-417; George Tierney on, V 142-150
- AGRICULTURE, STATE BOARD OF, N. J. State Farmers Union Council on selection of members, III 415; George Tierney on, V 142-150; Williard H. Allen on, V 206-208; brief of N. J. Agricultural Society on selection of, V 483-487; statement to Committee on Executive, etc., by N. J. State Grange, N. J. Farm Bureau, United Milk Producers of N. J., N. J. State Poultry Association, N. J. State Potato Association, N. J. State Horticultural Society and N. J. Agricultural Society, on selection of members, V 488-490
- AIRPORTS, Robert L. Copey on zoning, III 635-636; John W. Griggs on zoning, III 636-638
- ALLEN, WILLIARD H., SECRETARY OF AGRICULTURE, letter to Committee on Executive, etc., on State Board of Agriculture and consolidation of departments, V 206-208
- ALLIED THEATRE OWNERS OF NEW JERSEY, INC., letter and proposal of, to Committee on Rights, etc., that freedom of speech include any mode of communication, III 290; resolution of, to Committee on the Legislative on gambling, III 792-793
- ALL SAINTS MEMORIAL POST, resolution to Committee on the Legislative, on gambling, III 490-491
- ALTERNATE PROPOSALS, CONVENTION'S POWER TO SUBMIT, Attorney-General Walter D. Van Riper on, V 911-931, V 933-956; Russell E. Watson on, V 933-956
- AMENDMENTS, Committee on Rights, etc., defers action on, III 13, discusses, III 15-16, votes on proposals concerning, III 35-37, votes on provisions for, III 195-198; 205-208, 210; Mrs. Arthur C. Gillette on, III 27-28; Winston Paul on, III 28-29, 175-178; Irving Leuchter on, III 29-33; James Kerney, Jr. on, III 96-101; Mrs. Robert W. Cornealson on, III 101-103; Carl Holderman on, III 122-132, 212-219; George Greenleaf on, III 132-137; N. J. Council

- of Churches, recommendations on, III 148-149; Robert C. Hendrickson on, III 168-171, 335-341; Mrs. Myra C. Hacker on, III 178-180; Mrs. Frank Fobert on, III 223-227; James Imbrie on, III 227-230; Thomas Parsonnet on, III 231-243; Walter Pollschuck on, III 258-259; Lewis E. Thompson on, III 259-261; Herbert Voorhees on, III 262-264; Jesse Moskowitz on, III 264-271; American Federation of Hosiery Workers, Branch 166 on, III 291; Kirk Brown on, III 313-315; N. J. League of Women Voters on, III 356-361, 362-363; N. J. Committee for Constitutional Revision on, III 376; N. J. Committee for Constitutional Revision, Committee on Research and Drafting, on, III 377-383; N. J. Farm Bureau and N. J. State Grange on, III 401-403; N. J. Federation of Women's Clubs on, III 404-405; N. J. State Industrial Union Council, C.I.O. on, III 414, 429-433; N. J. State Federation of Labor on, III 423-425; Arthur N. Pierson on, III 439; United Office and Professional Workers of America, C.I.O. on, III 453
- AMERICAN ASSOCIATION OF UNIVERSITY WOMEN OF NEW JERSEY, Mrs. Herbert Davis presents views of, to Committee on Rights, etc., on periodic revision of Constitution, III 88
- AMERICAN CITIZENSHIP FOUNDATION, Charles O. Frye presents views of, to Committee on Taxation and Finance, on taxation and assessment of property, V 806-808
- AMERICAN FEDERATION OF HOSIERY WORKERS, BRANCH 166, letter to Committee on Rights, etc., discusses collective bargaining, discrimination in civil rights, discrimination in use of public property, amendment and periodic revision of Constitution, III 291
- AMERICAN JEWISH CONGRESS, Jesse Moskowitz presents views of, to Committee on Rights, etc., on due process of law, discrimination in civil rights, collective bargaining, amendment and periodic revision of Constitution, III 264-271
- AMERICAN LEGION, COLONIA POST 248, letter to Committee on Taxation and Finance on tax exemption for veterans, V 835
- AMERICAN LEGION, DEPARTMENT OF NEW JERSEY, Richard Thomas Duffy presents recommendations to Committee on Rights, etc., on veterans, III 54-56; William G. McKinley presents recommendations to Committee on Rights, etc., on civil service rights of veterans, III 56-59, presents views of, to Committee on Executive, etc., on militia, V 347-357; letter to Committee on Rights, etc., urges inclusion of provision on exemptions, privileges and preferences granted to veterans, III 292-293; Joseph H. Edgar presents views of, to Committee on Taxation and Finance on tax exemptions for veterans, V 656-664
- AMERICAN LEGION OF ESSEX COUNTY, Harold Crane presents views of, to Committee on the Legislative on gambling and bingo, III 741-742
- AMERICAN VETERANS COMMITTEE, William H. Falcey presents views of, to Committee on Taxation and Finance on tax exemption for veterans, V 673-676
- AMERICAN VETERANS COMMITTEE, MONTCLAIR CHAPTER, letter to Committee on Executive, etc., on veterans' preference in civil service, V 442-443
- AMERICAN VETERANS OF WORLD WAR II, NEW JERSEY STATE DEPARTMENT, Charles P. Sullivan presents recommendations to Committee on Rights, etc., on inclusion of privileges for veterans in Constitution, III 155-156; resolution to Committee on Rights, etc., urges inclusion of provision on exemptions, privileges and preferences granted to veterans, III 294; resolution of, to Committee on Taxation and Finance on tax exemption for veterans, V 836
- ANNUAL SESSIONS (see *Legislature, Sessions, Annual*)
- APPEAL, RIGHT OF, N. W. Hunter on, IV 701-702
- APPEALS, Robert C. Hendrickson on, IV 5-16; Russell E. Watson on, IV 150-163; Judge Daniel J. Brennan on, IV 164-183; Judge William A. Smith on, IV 193-200; William J. Brennan, Jr. on, IV 201-204; Justice Frederic R. Colie on,

- IV 206-223; Samuel Kaufman on, IV 231-240; Milton T. Lasher on, IV 253-265; William H. Wurts on, IV 265-273; Attorney-General Walter D. Van Riper on, IV 281-300; Alexander F. Ormsby on, IV 328-339; Edward Gaulkin on, IV 355-373; Josiah Stryker on, IV 374-388, 727-728; Chancellor A. Dayton Oliphant on, IV 396-415; Governor Alfred E. Driscoll on, IV 427-445; Weidner Titzck on, IV 471-475; Judge Thomas Madden on, IV 475-484; Fayette N. Talley on, IV 485-488; George W. C. McCarter on, IV 490-495; Morgan R. Seiffert on, IV 514-517; Joseph A. Davis on, IV 541-552; N. J. League of Women Voters on, IV 595-598; Essex County Bar Association on, IV 559-645; Hudson County Bar Association, resolution on, IV 646-648; Gloucester County Bar Association on, IV 649; *N. J. Law Journal* on, IV 655-681; Union County Bar Association on, IV 694-696; Archibald N. Jordan on, IV 725-726 (see also, *Appellate Court* and *Appellate Division*)
- APPEALS, RECORD, PRINTING, Archibald N. Jordan on, IV 716, 725
- APPELLATE COURT, Joseph A. Davis on, IV 505-513, 541-552; Camden County Bar Association, report and recommendations on, IV 691-692, 693 (see also, *Appeals*)
- APPELLATE DIVISION, Chief Justice Clarence E. Case on, IV 131-150; Judge Daniel J. Brennan on, IV 164-183; William J. Brennan, Jr. on, IV 201-204; N. J. League of Women Voters on, IV 595-598; *N. J. Law Journal* on, IV 655-681; Arthur T. Vanderbilt on, IV 729-731; Sol Kantor on, IV 736-738 (see also, *Appeals*)
- APPOINTMENTS (see *Governor, Appointments*)
- APPOINTMENTS, AD INTERIM (see *Governor, Appointments ad interim*)
- APPOINTMENTS, GOVERNOR'S POWER (see *Governor, Appointments*)
- APPOINTMENTS, LEGISLATIVE (see *Legislature, Appointments by*)
- APPORTIONMENT (see *Assembly, Apportionment*)
- APPROPRIATION BILL, VETO, Morgan F. Larson on veto of, V 3-28; Committee on Executive, etc., votes provision for, V 328-331; memorandum of Herman Crystal on, V 447
- APROPRIATIONS, STATE (see *State Finances*)
- ARREST, FREEDOM FROM (see *Freedom from arrest*)
- ARROWSMITH, JAMES W., appearance before Committee on Rights, etc.; discusses initiative, referendum and recall, III 33; memorandum to Committee on the Legislative, on initiative, referendum and recall, III 794-799
- ASSEMBLY, revenue bills to originate in, III 658
- ASSEMBLY, APPORTIONMENT, Committee on the Legislative votes on provision for, III 482; Dr. Thomas Reed on, III 712-726
- ASSEMBLY DISTRICTS, John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587; Irving Leuchter on, III 614-617; Attorney-General Walter D. Van Riper advises Committee on the Legislative it cannot act on proposal for, III 641-644, on III 661-675; Committee on Legislative favors provision for election by, III 646; recommendations of N. J. State Federation of Labor on, III 885-887; recommendations of N. J. State Industrial Union Council, C.I.O. on, III 888; A. Harry Moore on, V 62-73; Charles R. Erdman, Jr. on, V 88-104
- ASSEMBLY, FREEDOM OF (see *Freedom of assembly*)
- ASSEMBLY, MEMBERS, ELECTION, Committee on the Legislative votes on provision for biennial, for two-year terms, III 482, votes provision for election, III 657; Morgan F. Larson on, V 3-28
- ASSEMBLY, MEMBERS, QUALIFICATIONS, Committee on the Legislative votes on provision for, III 481, votes provision for, III 646, 657
- ASSEMBLY, MEMBERS, TERMS, John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587; Robert C. Hendrickson on, III 592-613; Irving Leuchter on, III 614-617
- ASSESSMENT (see *Taxation, assessment of property*)
- ASSOCIATED RAILROADS OF NEW JERSEY, memorandum to Committee on Taxation and Finance, on taxation of railroads, V 837-843

- ASSOCIATED VETERANS AND FRATERNAL GROUPS OF HUDSON COUNTY, Francis X. Fahy presents views of, to Committee on the Legislative on bingo, gambling, pari-mutuel betting and horse racing, III 550-557
- ASSOCIATION OF CHOSEN FREEHOLDERS OF NEW JERSEY, resolution of, to Committee on the Legislative on county zoning, III 800-801
- ASSUMPTION B.V.M., POST NO. 465, resolution to Committee on the Legislative on gambling, III 490-491
- ATLANTIC CITY MINISTERIAL UNION, resolution of, to Committee on the Legislative on gambling, III 802-803
- ATTAINDER, BILL OF, Committee on the Legislative votes on provision on, III 488, provides none to be passed, III 652, 658
- ATTORNEY-GENERAL, Committee on Executive, etc., votes to delete provision for, V 205, votes to include provision for, V 415
- AUDITING, Harry W. Wolkstein on, V 556-560
- AUDITOR OF ACCOUNTS, TREASURY, Committee on Rights, etc., votes to delete provision for Secretary of State as, III 24-25
(see also, *Secretary of State*)
- AUDITOR, STATE, Harry W. Wolkstein on election by Legislature, V 556-560; Mrs. Irene Baldwin on election by Legislature, V 747-749
(see also, *State Auditor*)
- AUTOMATIC SESSION (see *Legislature, Sessions, Special*)

B

- BAGBY, SCOTT, appearance before Committee on the Legislative; presents views of Montclair Planning Board on zoning, III 541-543; letter to Committee on the Legislative, on planning, III 804-805
- BAIL, Committee on Rights, etc., votes on provision for, III 173, 173-174
- BAKER, HORACE E., appearance before Committee on the Judiciary; discusses Court of Chancery and unified court, IV 533-534
- BALDWIN, MRS. IRENE, appearance before Committee on Taxation and Finance; presents views of N. J. League of Women Voters on single fund, dedication of funds, single fiscal year, election of State Auditor by Legislature, appropriations, taxation, tax clause and education, V 747-749; presents views on taxation, assessment of property, tax clause, true value, exemption and transportation of school children, V 808-809
- BALLOTS, Committee on Submission and Address on use at Constitution referendum, V 979-980
- BAPTISTS OF NEW JERSEY, Rev. Page M. Beverly presents view of, to Committee on the Legislative on gambling and bingo, III 756-758
- BARADALE, MORGAN, appearance before Committee on Taxation and Finance; presents views on free public libraries, V 779-781
- BARD, ALBERT S., appearance before Committee on the Legislative; presents views of N. J. Roadside Council on planning, conservation and billboards, III 588-592
- BARLOW, STEPHEN H., BRIGADIER-GENERAL, letter to Committee on Executive, etc., on militia, V 190-191; appearance before Committee on Executive, etc.; presents views on militia, V 193-203
- BARNEHENN, MRS. RALPH, appearance before Committee on Executive, etc.; presents views of N. J. State Federation of Women's Clubs on Lieutenant-Governor and cabinet, V 389-390
- BARTON, CHARLES K., member, Committee on Executive, etc., V iii
- BATES, SANFORD, COMMISSIONER, appearance before Committee on Executive, etc.; presents views on pardon, Board of Pardons, parole, pardon power of Governor and Principal Keeper of Prison, V 177-190
- BARUS, MRS. JANE E., appearance before Committee on Rights, etc.; advises that Committee on Executive, etc., will eliminate reference to specific officers

- in Constitution, III 165-167; member and secretary, Committee on Executive, etc., V iii
- BEBOUT, MRS. EDWIN, appearance before Committee on Executive, etc.; presents views of N. J. League of Women Voters on militia, oath of office by appointive state officers, compensation or fees received by appointive state officers to be part of general treasury, officers deleted from Constitution, appointment of officers, Auditor to be named in Constitution, and departments to be limited to 20, V 170-175; presents views of N. J. League of Women Voters on civil service, V 208-209
- BEBOUT, JOHN E., submits memorandum to Committee on Rights, etc., on periodic revision of Constitution, III 295-299; appearance before Committee on the Legislative; presents views of N. J. Committee for Constitutional Revision on home rule, mandatory legislation, legislative lightning, investigatory power of the Legislature, election by Assembly districts, two-year terms for Assemblymen, four-year terms for Senators, Legislative Council, salaries of legislators, legislative sessions and legislative procedure, III 565-580; co-author of plan on reorganization of judiciary submitted by Miss Evelyn Seufert, IV 26-37; appearance before Committee on Executive, etc.; presents views of N. J. Committee for Constitutional Revision on gubernatorial succession, reorganization and administration of departments, execution of laws and investigations by Governor, referendum, appointment of department heads, election of State Auditor by Legislature, county officials as constitutional officers, separation of powers, power of Governor, veto, Judicial Council and cabinet, V 112-127
- BECKER, CHARLES, appearance before Committee on Rights, etc.; presents recommendations of Veterans of Foreign Wars for privileges and preferences for veterans, III 143-146; appearance before Committee on the Legislative; presents views of Veterans of Foreign Wars on gambling and bingo, III 752-755; appearance before Committee on Executive, etc.; presents views of Veterans of Foreign Wars on militia, V 399-401; appearance before Committee on Taxation and Finance; presents views of Veterans of Foreign Wars on tax exemption for veterans, V 676-680
- BENEDICT, PURDY F., letter to Committee on Rights, etc., urges that special privileges should not be in Constitution, III 300
- BERGEN COUNTY BAR ASSOCIATION, Milton T. Lasher presents views of, on unified court, appellate court, equity, county courts, tenure, appointment, retirement and removal of judges, and rule-making powers of courts, IV 253-265; William H. Wurts discusses plan of, on unified court, appellate court, Chancery Court, county courts, justices of the peace, impeachment court, tenure of judges and appeals, IV 265-273
- BEVERLY, REV. PAGE M., appearance before Committee on the Legislative; presents views of Baptists of N. J. on gambling and bingo, III 756-758
- BIENNIAL SESSIONS (*see Legislature, Sessions*)
- BILL, JOHN, appearance before Committee on Rights, etc.; presents recommendations of Disabled American Veterans for preference for disabled veterans, III 146-148; appearance before Committee on Taxation and Finance; presents views of Disabled American Veterans on tax exemption for veterans, V 681-685
- BILLBOARDS, Albert S. Bard on, III 588-592
- BILL OF RIGHTS, William C. Cope on, III 47-54; Elwood M. Dean presents recommendations of Communist Party of N. J. on, III 59-70; Robert C. Hendrickson on, III 335-341; N. J. League of Women Voters on, III 356-361; J. B. R. Smith on, III 442-444; State Federation of District Boards of Education of N. J. on, III 452
- BILL OF RIGHTS, ECONOMIC, Communist Party of N. J. on, III 323-324
- BINGO (*see Gambling*)
- BISHOP, A. THORNTON, letter of, to Committee on the Legislative on planning and conservation, III 806
- BISHOP, REV. J. E., letter to Committee on Rights, etc., urges that privileges not be granted to individuals or groups, III 301-302

- BLACK, CHARLES C., letter to Committee on the Judiciary, on Court of Chancery and Court of Appeals, IV 717
- BLACKBURN, DONALD C., appearance before Committee on Rights, etc.; presents view on voting age, III 19-20
- BOARDMAN, SAMUEL W., letter to Committee on the Judiciary, on Court of Appeals, name of court and Court of Chancery, IV 723-724
- BOLTZ, REV. THEODORE WOODROW, letter to Committee on Rights, etc., urges separation of church and State, III 303-304
- BOSCIANO, FRANK, letter to Committee on the Judiciary, on unified court, penal and correctional institutions, elections and tax assessments, IV 718-720
- BOUCHER, F. R., appearance before Committee on Rights, etc.; discusses voting age, III 20
- BOUTON, EUGENE, letter to Committee on Rights, etc., proposes rights and privileges for benefit of individual, III 305-309; letter to Committee on Rights, etc., against special privileges in Constitution, III 310
- BOWEN, HENRY REED, appearance before Committee on the Legislative, III 587
- BOWERS, JAMES I., ADJUTANT-GENERAL, appearance before Committee on Executive, etc.; presents views on militia, V 74-87
- BOWLBY, REV. HARRY L., appearance before Committee on Rights, etc.; presents recommendations of Lord's Day Alliance of the U. S. on Sunday, III 80-82; appearance before Committee on the Legislative; presents views of Lord's Day Alliance of the U. S. on gambling and gambling on Sunday, III 626-630
- BOWSER, JOSEPH, appearance before Committee on Rights, etc., III 156
- BRADY, A. C., submits brief to Committee on Rights, etc., on behalf of N. J. Conference of the Methodist Church on the observation of Sunday, III 157-158
- BRENNAN, JUDGE DANIEL J., appearance before Committee on the Judiciary; discusses unified court, retirement, tenure and appointment of judges, rule-making power of courts, appeals, prerogative writs, Appellate Division and equity, IV 164-183
- BRENNAN, WILLIAM J., JR., appearance before Committee on the Judiciary; presents editorials of *N. J. Law Journal* on unified court, appellate court and Appellate Division, IV 201-204
- BROGAN, THOMAS J., member, Committee on the Judiciary, IV iii
- BROOKS, NAT, appearance before Committee on Rights, etc.; presents views of N. J. American Youth for Democracy on discrimination in civil rights and voting age at 18, III 256-258
- BROWN, CHARLES A., appearance before Committee on Taxation and Finance; presents views of State Federation of District Boards of Education of N. J. on taxation, schools, State School Fund, tax clause, taxation of railroads, assessment of property and state aid for education, V 625-635
- BROWN, ERIC, letter to Committee on Rights, etc., urges inclusion of provision on licensing of professions, III 311-312
- BROWN, HORACE G., appearance before Committee on the Judiciary; presents recommendation of Gloucester County Bar Association on unified court, IV 98-99
- BROWN, KIRK, letter and proposal to Committee on Rights, etc., on amendment and periodic revision of the Constitution, III 313-315; proposal to Committee on Rights, etc., on rights of labor, III 316; letter to Committee on the Legislative, on dual office holding by legislators, III 807-808
- BROWN, JUDGE THOMAS, memorandum to Committee on Rights, etc., on Preamble, III 317-321
- BUCKNUM, MRS., appearance before Committee on Rights, etc.; discusses views of N. J. Federation of Women's Clubs on what a constitution should contain, III 35
- BUDGET (see *State Finances, Budget*)

- BUDGET, STATE, SINGLE (see *State Finances, Single Budget*)
- BUILDING CONTRACTORS' ASSOCIATION OF NEW JERSEY, Harry W. Wolkstein presents views of, to Committee on Taxation and Finance on control over financial functions by Governor, appropriations, single budget, dedication of funds, duties of fiscal officers, auditing, election of State Auditor by Legislature, State revenues, taxation, assessment of property and inter-governmental relations, V 556-560
- BURGER, ALVIN A., appearance before Committee on Taxation and Finance; presents views of N. J. State Chamber of Commerce on credit of State, debt, State School Fund, dedication of funds, taxation, tax exemption, tax exemptions for veterans, single budget and single fiscal year, V 543
- BURLINGTON COUNTY BAR ASSOCIATION, resolution of, to Committee on the Judiciary on Court of Chancery, IV 705
- BURRELL, J. MERCER, appearance before Committee on Rights, etc.; presents recommendations of Essex County Colored Republican Council on discrimination and civil rights, III 89-96
- BUSTARD, JOSEPH L., appearance before Committee on Rights, etc.; presents recommendation of N. J. Council Against Discrimination on discrimination, III 43-47; memorandum to Committee on Rights, etc., on definition of race, color, religion and creed, III 329-330

C

- CABINET (see *Governor, Cabinet*)
- CAFIERO, ANTHONY J., member and vice-chairman of Committee on Submission and Address, V iv
- CAHILL, WILLIAM T., appearance before Committee on the Judiciary on behalf of the Hudson County Bar Association, IV 95
- CALDWELL, CURTIS C. (see *Colwell, Curtis C.*)
- CAMDEN COUNTY BAR ASSOCIATION, John Henry Reiners, Jr. discusses report of, before Committee on the Judiciary on Court of Chancery and appointment of vice-chancellors, IV 471-485; Weidner Titzck discusses views of, before Committee on the Judiciary on justices of the peace, county courts, Court of Chancery, appointment of vice-chancellors, Prerogative Court, appeals, Court of Pardons, tenure and qualifications of judges, IV 471-475; Judge Thomas Madden discusses views of, before Committee on the Judiciary on appellate court, Court of Chancery, specialization in the judiciary, federal court practice, retirement and tenure of judges, IV 475-484; report of Constitutional Revision Committee submitted to Committee on the Judiciary on justices of the peace, county court, Court of Chancery, Prerogative Court, appellate court, Court of Pardons, appointment, tenure and qualifications of judges, IV 691-692; recommendations of, on report, IV 693
- CAMDEN COUNTY MINISTERIAL ASSOCIATION, Rev. Frank Stanger presents views of, to Committee on Rights, etc., on separation of church and State, civil rights and gambling, III 158
- CAMDEN METHODIST MISSIONARY SOCIETY, Rev. Frank Stanger presents views of, to Committee on Rights, etc., on separation of church and State civil rights and gambling, III 158
- CAMP, PERCY, member, Committee on the Legislative, III iii
- CAMPBELL, ALEX, appearance before Committee on the Judiciary; presents views of Sheriffs' Association of N. J. on status and succession of sheriffs, IV 393-395
- CAREY, ROBERT, member and vice-chairman, Committee on Rights, etc., III iii; letter to Committee on the Legislative, on gambling and bingo, III 809-812; appearance before Committee on the Judiciary; discusses retirement age of judges and name of Chancery Court, IV 541-543; proposal of, to Committee on Executive, etc., on four-year term for Governor and gubernatorial succession, V 206

- CARPENTER, MRS., appearance before Committee on Rights, etc.; presents recommendations of N. J. Federation of Business and Professional Women's Clubs on equal rights of women, III 82-84
- CARTON, LAWRENCE A., JR., appearance before Committee on the Judiciary; discusses jurisdiction of court, review of writs and name of court, IV 518-520
- CASE, CHIEF JUSTICE CLARENCE E., appearance before Committee on the Judiciary; discusses Court of Appeal, retirement of judges, prerogative writs, an Appellate Division, equity and the Court of Chancery, IV 131-150
- CATHOLIC ARCHDIOCESE OF CAMDEN, John J. Crean presents views of, to Committee on Taxation and Finance on tax exemption for charitable, educational and religious institutions and cemetery associations, V 655
- CATHOLIC ARCHDIOCESE OF NEWARK, John A. Matthews presents views of, to Committee on Taxation and Finance on tax exemption of property of charitable, educational and religious institutions and cemetery associations, V 651-655
- CATHOLIC DIOCESE OF PATERSON, John N. Nolan presents views of, to Committee on Taxation and Finance on tax exemptions for charitable, educational and religious institutions and cemetery associations, V 656
- CATHOLIC DIOCESE OF TRENTON, Augustine V. Gribbin presents views of, to Committee on Taxation and Finance on tax exemptions for charitable, educational and religious institutions and cemetery associations, V 655-656
- CATHOLIC WAR VETERANS, INC., BERGEN COUNTY CHAPTER, resolution of, to Committee on the Legislative on gambling and bingo, III 813-814
- CATHOLIC WAR VETERANS, CONCEPTION POST NO. 1188, resolution of, to Committee on the Legislative on gambling, III 490, 491, 815
- CATHOLIC WAR VETERANS, GREENVILLE POST NO. 1170, resolution of, to Committee on the Legislative on gambling, III 490-491
- CATHOLIC WAR VETERANS, HUDSON CITY POST NO. 758, resolution of, to Committee on the Legislative on gambling, III 490-491
- CATHOLIC WAR VETERANS, HUDSON COUNTY CHAPTER, resolution of, to Committee on the Legislative on gambling, III 490-491
- CATHOLIC WAR VETERANS, MSGR. A. L. ADZEMA, NO. 621, resolution of, to Committee on the Legislative on gambling, III 490-491
- CATHOLIC WAR VETERANS, POST NO. 37, JERSEY CITY, resolution of, to Committee on the Legislative on gambling, III 490-491
- CATHOLIC WAR VETERANS, POST NO. 758, Maurice A. Walsh, Jr. presents views of, to Committee on the Legislative on gambling, III 559-560
- CATHOLIC WAR VETERANS, INC., SGT. JOSEPH J. SADOWSKI, C. M. H. POST NO. 492, letter to Committee on the Legislative, on gambling and bingo, III 818
- CATHOLIC WAR VETERANS, UNION COUNTY CHAPTER, James Devlin, Jr. presents views of, to Committee on the Legislative on gambling, III 620-621
- CATHOLIC WAR VETERANS OF NEW JERSEY, STATE DEPARTMENT OF, Francis X. Fahy presents views of, to Committee on the Legislative on gambling, pari-mutuel betting, horse racing and bingo, III 630-632, on gambling and bingo, III 738-739; letter to Committee on the Legislative, on gambling, III 816-817
- CAUCUS SYSTEM, recommendations of N. J. State Federation of Labor on, III 885-887; letter of Thomas D. Taggart, Jr. on, III 893-899
(see also, *Legislative Procedure*)
- CAVICCHIA, DOMINIC A., member, Committee on the Legislative, III iii
- CEMETERY ASSOCIATIONS, TAX EXEMPTION, John A. Matthews on, V 651-655; John J. Crean on, V 655; Augustine V. Gribbin on, V 655-656; John N. Nolan on, V 656
- CHANCE, R. ROBINSON, letter to Committee on Taxation and Finance on transportation of children to school, tax exemption, appropriations, debt, assessment of property, true value and dedication of funds, V 844-846

- CHANCERY, COURT OF, Milton B. Conford on, IV 63-95; Morris M. Schnitzer on, IV 67-77; Chief Justice Clarence E. Case on, IV 131-150; Israel B. Greene on, IV 223-231; Samuel Kaufman on, IV 231-240; Edward J. Gilhooly on, IV 240-253; William H. Wurts on, IV 265-273; Frank W. Sutton, Jr. on, IV 300-304; James Kerney, Jr. on, IV 340-349; Sol D. Kapelsohn on, IV 349-355; Edward Gaulkin on, IV 355-373; Josiah Stryker on, IV 374-388, 727-728; H. Collins Minton, Jr. on, IV 389-391; Chancellor A. Dayton Oliphant on, IV 396-415; Ward Kremer on, IV 446-454, 498-500; Howard Ewart on, IV 454-460, 521-525; Harry R. Cooper on, IV 460-461; Frederick E. Lombard on, IV 461-463; Leo J. St. Clair on, IV 463-467; Philip R. Gebhardt on, IV 468-470, 526-527; John Henry Reiners, Jr. on, IV 471-485; Weidner Titzck on, IV 471-475; Judge Thomas Madden on, IV 475-484; Morgan R. Seiffert on, IV 514-517; Louis B. LeDuc on, IV 531-533; Horace E. Baker on, IV 533-534; Charles Danzig on, IV 534-537; Robert Carey on, IV 541-543; Joseph A. Davis on, IV 541-552; Essex County Bar Association on, IV 599-645; resolution of Hudson County Bar Association on, IV 646-648; *N. J. Law Journal* on, IV 655-681; resolution of Mercer County Bar Association on, IV 682; Judge Guy L. Fake on, IV 683-688; resolution of Ocean County Lawyers' Club and Ocean County Bar Association on, IV 689; resolution of Hunterdon County Bar Association on, IV 690; Camden County Bar Association, report and recommendations on, IV 691-692, 693; Union County Bar Association on, IV 694-696; N. J. State Federation of Labor on, IV 700; report of N. J. State Bar Association on, IV 703-704; Burlington County Bar Association on, IV 705; Morris Rosenberg on, IV 711-712; Theodore McC. Marsh on, IV 714-715; Charles C. Black on, IV 717; Samuel W. Boardman on, IV 723-724
(see also, *Equity*)
- CHARITABLE INSTITUTIONS (see *State Aid*)
- CHARITABLE INSTITUTIONS, TAX EXEMPTION, John A. Matthews on, V 651-655; John J. Green on, V 655; Augustine V. Gribbin on, V 655-656; John N. Nolan on, V 656
- CHIEF JUSTICE, ADMINISTRATIVE POWER, Louis LeDuc on, IV 17-26; Evelyn Seufert on, IV 26-37; Robert C. Hendrickson on, V 5-16
- CHIN STRAP POST, 29th DIVISION ASSOCIATION, resolution to Committee on the Legislative, on gambling, III 490-491
- CHURCH AND STATE, SEPARATION OF, Widener Titzck on, III 149-153; Rev. Frank Bateman Stanger on, III 158, 448-450; Rev. Theodore Woodrow Boltz on, III 303-304; N. J. State Federation of Teachers on, III 426; Presbytery of Morris and Orange on, III 440; analysis of N. J. School-Bus case, III 466-468
(see also, *Education, transportation of pupils*)
- CIRCUIT COURT, Sol Kantor on, IV 736-738
- CITIZENS, DUTIES OF, Robert C. Hendrickson on, III 335-341
- CITIZENS, RIGHTS OF, N. J. League of Women Voters on, III 356-361
- CITIZENSHIP, RESPONSIBILITY FOR, Robert C. Hendrickson on, III 168-171
- CIVIL RIGHTS, Mrs. Leonora B. Willette on, III 42-43; Joseph L. Bustard on, III 43-47; Fred W. Martin on, III 70-73; J. Mercer Burrell on, III 89-96; Jerome C. Eisenberg on, III 109-122; A. LeRoy Jordon on, III 156-157; Rev. Frank Bateman Stanger on, III 158, 448-450; Committee on Rights, etc., votes on discrimination provision for, III 206; James Imbrie on, III 227-230; Walter Pollschuck on, III 258-259; Joint Committee on Constitutional Bill of Rights on, III 343-355; N. J. State Farmers Union Council on, III 415; United Office and Professional Workers of America, C.I.O. on, III 453; Urban Colored Population Commission on, III 454-455
(see also, *Discrimination*)
- CIVIL SERVICE, Miss Bertha Lawrence on, III 103-106; Edward A. Markley on merit as basis, III 200-201, on, V 390-392; Bennett M. Rich on, V 104-112; Gibson LeRoy on, V 157-167; Committee on Executive, etc., discusses provision for, V 206, votes on provision for, V 282-287, 404; Mrs. Edwin Bebout on, V 207-208; George Graham on, V 383-389; N. J. League of Women Voters on, V 475-480, statement of on, V 481-482; memorandum of N. J. Civil Service Association, Inc. on, V 494-497; N. J. Committee for Constitutional Revi-

- sion on, V 498-499; N. J. Council, State, County and Municipal Workers on, V 515
(see also, *Veterans, Civil Service preference* and *Veterans, preference*)
- CIVIL SERVICE, VETERANS' PREFERENCE (see *Veterans, Civil Service preference*)
- CLASSIFICATION OF PROPERTY, ASSESSMENT BASIS (see *Taxation, assessment of property*)
- COLIE, JUSTICE FREDERIC R., appearance before Committee on the Judiciary; discusses appellate court, intermediate appeals court, retirement, pension, tenure and removal of judges, prerogative writs, unified court, equity and rule-making power of courts, IV 206-223
- COLLECTIVE BARGAINING, Mrs. Frank Fobert on, III 40-42, 223-227; James Kerney, Jr. on, III 96-101; Jerome C. Eisenberg on, III 109-122; Carl Holderman on, III 122-132, 212-219; George Greenleaf on, III 132-137; N. J. Council of Churches recommendations on, III 148-149, on, III 384-385; Robert C. Hendrickson on, III 168-171, 335-341; Committee on Rights, etc., votes on provision for, III 190-192, 202; Anthony Vitrone on, III 219-220; Gibson LeRoy on, III 220-223; James Imbrie on, III 227-230; Thomas Parsonnet on, III 231-243; Lewis E. Thompson on, III 259-261; Jesse Moskovitz on, III 264-271; American Federation of Hosiery Workers, Branch 166 on, III 291; Communist Party of N. J. on, III 323-324; Joint Committee on Constitutional Bill of Rights on, III 343-355; N. J. League of Women Voters on, III 356-361; N. J. American Youth for Democracy on, III 375; N. J. Committee for Constitutional Revision, Committee on Research and Drafting, on, III 377-383; N. J. Council, State, County and Municipal Workers on, III 386-392; N. J. Manufacturers Association on, III 408-409, 410-411; N. J. State Federation of Labor on, III 423-425; N. J. Women's Government Study Council on, III 435-437; United Office and Professional Workers of America, C.I.O. on, III 453, proposals on, III 465
- COLLENA, ALBERTO, appearance before Committee on Rights, etc., III 271
- COLLINS, ALBERTO, letter to Committee on Rights, etc., on right to jury trial in mental incompetency cases, III 322
- COLOR, Jerome C. Eisenberg on, III 109-122; Mrs. Myrna C. Hacker on, III 178-180; Joseph L. Bustard on definition of, III 329-330
- COLWELL, CURTIS C., appearance before Committee on the Legislative; presents views of Essex County on excess condemnation and zoning for counties, III 499-508; discusses county zoning, III 682-685
- C. I. O. (see *New Jersey State Industrial Union Council, C. I. O.*)
- COMMISSIONS, Committee on Rights, etc., votes on separate section for, III 25
- COMMON LAW CRIMES, PROSECUTION (see *Crimes, Common Law*)
- COMMUNIST PARTY OF NEW JERSEY, Elwood M. Dean presents recommendations of, to Committee on Rights, etc., on Bill of Rights, III 59-70; Miss Gaetana Mahan presents views of, to Committee on Rights, etc., on equal rights of women, III 77-78; proposals to Committee on Rights, etc., on collective bargaining, peaceful picketing, equal protection of the laws, discrimination, economic bill of rights, equal rights for women, III 323-324
- COMPTROLLER GENERAL, Committee on the Legislative receives recommendation from Arthur T. Vanderbilt on, in place of State Auditor, III 764 (see also, *State Auditor*)
- CONDEMNATION, Committee on Rights, etc., discusses whether property can be taken by individual or private corporation, as well as State, III 10-11, votes to defer action on a provision for, III 174, votes on provision for, III 183; Mrs. Frank Fobert on, III 223-227; Leo Pfeiffer on, III 253-255; Robert C. Hendrickson on, III 335-341, 592-613; N. J. League of Women Voters on, III 356-361; N. J. Women's Government Study Council on, III 435-437; Committee on the Legislative votes on provision for, III 489, 658, 659, votes provision for, III 651, 652; Curtis C. Colwell on excess, III 499-508; Charles Handler on, III 732-738

- CONDEMNATION, EXCESS, Curtis C. Colwell on, III 499-508; Dr. Thomas Reed on, III 712-726; letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882
- CONDIT, GEORGE, appearance before Committee on the Legislative; presents views of Motor Vehicle Agents' Association of N. J. on appointive power of the Executive, III 691-694; appearance before Committee on Executive, etc.; presents views of N. J. Motor Vehicle Agents' Association on appointment of department heads, V 392-395
- CONFORD, MILTON B., appearance before Committee on the Judiciary; discusses report of Committee of Essex County Bar Association on unified court and Court of Chancery, IV 63-67; argues for retention of Court of Chancery as a separate court, IV 77-95; appearance before Committee on Taxation and Finance; presents views of N. J. State League of Municipalities on assessment of property, taxation and taxation of railroads, V 563-576, on taxation of railroads, V 639-645, on taxation, tax clause, assessment of property, taxation of railroads and classification of property, V 759-768
- CONNELL, WILLIAM H., appearance before Committee on the Legislative; presents views of Motor Carriers' Service Bureau on special laws, III 492-494; appearance before Committee on Taxation and Finance; presents views of Motor Carriers' Service Bureau on tax exemption, V 554-556
- CONSERVATION, Mrs. Harold W. Corlett on, III 14-15; N. J. League of Women Voters on, III 356-361, 364, recommendations of, on, III 849-854; Albert S. Bard on, III 588-592; letter of A. Thornton Bishop on, III 806; letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882
- CONSTANTINE, MRS. MARION, member and secretary of Committee on Rules, Organization and Business Affairs, V iv
- CONSTITUTION, PRINCIPLES OF, N. J. Farm Bureau and N. J. State Grange on, III 395-400
- CONSTITUTION, PRINTING AND DISTRIBUTION OF, Francis V. D. Lloyd on, V 957; H. A. Enzer on, V 957-958; Ernest Kerr on, V 958-966; Arthur C. Kammerman on, V 967-977; George Hastings on, V 972-977; Frank B. Hutchinson on, V 977; Committee on Submission and Address on, V 986-990
- CONSTITUTION, REFERENDUM, Committee on Submission and Address on use of ballots and voting machines, V 979-980, on, V 980-986
- CONSTITUTION, REVISION, ALTERNATE PROPOSALS, Attorney-General Walter D. Van Riper on, III 661-675
- CONSTITUTION, REVISION, PERIODIC (see *Revision Constitution, Periodic*)
- CONSTITUTION, REVISION, PRIOR PROPOSED, report and proposals of Commission on Revision of the N. J. Constitution, May 1942, on rights, etc., III 275-283; proposed revised Constitution of 1944, text of, on rights, etc., III 284-289; excerpts from report of Commission on Revision, relating to Legislative Article, III 773-783; excerpts from proposed revision of 1944 relating to Legislative Article, III 784-791; statement to Committee on the Legislative by John F. Evans and George J. Miller dealing with local government, III 820-843; report of Commission on Revision and text of Judicial Article, IV 556-565; proposed revised Judicial Article of 1944, IV 566-574; report of Commission on Revision, excerpts relating to articles on Executive and Administrative and on public officers, V 421-433; excerpts from proposed Revision of 1944 relating to articles on Executive and on Public Officers and Employees, V 434-441; Commission on Revision report on and text of Finance Article, V 827-829, proposed Revision of 1944, excerpts relating to Finance Article, V 830-831
- CONSTITUTION, SELF-EXECUTING, Committee on Rights, etc., defeats proposal to include provision for, III 198-199; N. J. Committee for Constitutional Revision, Committee on Research and Drafting, on, III 377-383
- CONSTITUTION, SUBMISSION, WHAT CONSTITUTES A PART, Attorney-General Walter D. Van Riper on, V 911-931, 933-956; Russell E. Watson on, V 933-956

- CONSTITUTION, VIOLATIONS, RESTRAINT, Robert C. Hendrickson on, III 335-341
- CONSTITUTIONAL CONVENTION, Attorney-General Walter D. Van Riper on what constitutes majority in voting, V 911-931
- CONSTITUTIONAL OFFICERS, SCHEDULE ON, Committee on Executive, etc., votes to include provision for, V 415-416
- CONSUMERS' LEAGUE OF NEW JERSEY, Mrs. Richard Zwemer presents views of, to Committee on Rights, etc., on equal rights for women, III 74-76; letter to Committee on Rights, etc., on equal rights, III 325-328; letter to Committee on Executive, etc., on Lieutenant-Governor, V 445-446
- CONTRACTS, IMPAIRING OBLIGATION OF, LAW, Committee on the Legislative provides none to be passed, III 652, 658
- COOPER, DRURY W., letter to Committee on the Judiciary, on tenure of judges, IV 734
- COOPER, HARRY R., appearance before Committee on the Judiciary; discusses Court of Chancery, equity and court of appeals, IV 460-461
- COOPERATIVE MOVEMENT, N. J. State Federated Egg Producers Cooperative Association, Inc. on, III 416-417
- COPE, WILLIAM C., appearance before Committee on Rights, etc.; discusses Bill of Rights, III 47-54
- COPSEY, ROBERT L., appearance before Committee on the Legislative; presents views of N. J. State Aviation Commission on zoning for airports, III 635-636
- CORBIN, MR., letter of, to Committee on Executive, etc., on gubernatorial succession, V 192
- CORLETT, MRS. HAROLD W., appearance before Committee on Rights, etc.; presents views of N. J. League of Women Voters on conservation, development and utilization of natural resources of State, III 14-15
- CORNEALSON, MRS. ROBERT W., appearance before Committee on Rights, etc.; presents views of N. J. Federation of Women's Clubs on discrimination, equal rights of women, and amendment, III 101-103
- CORONERS, Committee on Executive, etc., votes on provision for, V 291-295, votes to delete from Constitution, V 406
- COUNTIES (see *Mandatory Legislation*)
- COUNTIES, ZONING (see *Zoning*)
- COUNTY CLERK, Henry G. Nulton on, IV 392-393; Harold G. Hoffman on vacancy in office, V 46-58; Committee on Executive, etc., votes on provision for, V 291-295
- COUNTY CLERKS, SURROGATES AND REGISTERS OF DEEDS AND MORTGAGES ASSOCIATION OF NEW JERSEY, Charles A. Otto, Jr. appears on behalf of, before Committee on the Judiciary on status of surrogates, IV 391-392; Henry G. Nulton presents position of, on status of county clerks, IV 392-393
- COUNTY COURTS (see *Courts, County*)
- COUNTY OFFICERS, CONSTITUTIONAL, A. Harry Moore on, V 62-73; John Bebout on, V 112-127; letter of Sol Kantor on election and term, V 474; N. J. Committee for Constitutional Revision on deletion of, V 498-499
- COUNTY PROSECUTORS (see *Prosecutors of the Pleas*)
- COURT, JURISDICTION OF, Lawrence A. Carton, Jr. on, IV 518-520; Robert H. Maida on, IV 520-521
- COURT OF APPEALS, Louis LeDuc on, IV 17-26; Chief Justice Clarence E. Case on, IV 131-150; Edward Gaulkin on, IV 355-373; Ward Kramer on, IV 446-454; Howard Ewart on, IV 454-460, 521-525; Harry R. Cooper on, IV 460-461; Fayette N. Talley on, IV 485-488; George W. C. McCarter on, IV 584-593; Essex County Bar Association on, IV 599-645; Hudson County Bar Association resolution on, IV 646-648; Union County Bar Association on, IV 694-696; N. J. Committee for Constitutional Revision on, IV 697; Morris

- County Bar Association on, IV 706; Charles C. Black on, IV 717; Samuel W. Boardman on, IV 723-724
- COURT OF IMPEACHMENT, G. W. C. McCarter on, IV 584-593
- COURT OF PARDONS, Attorney-General Walter D. Van Riper on, IV 281-300; Alexander F. Ormsby on, IV 328-339; Weidner Titzck on, IV 471-475; Camden County Bar Association report and recommendations on, IV 691-692, 693; Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58
- COURT, SIZE OF, Joseph A. Davis on, IV 505-513
- COURTS, ADMINISTRATION OF, Robert C. Hendrickson on, IV 5-16; Louis LeDuc on, IV 17-26; Evelyn Seufert on, IV 26-37; Mrs. B. G. Griffith on, IV 60-61; Dean Roscoe Pound on, IV 100-120; Russell E. Watson on, IV 150-163; Dean George S. Harris on, IV 183-193; Attorney-General Walter D. Van Riper on, IV 281-300; James Kerney, Jr. on, IV 340-349; Edward Gaulkin on, IV 355-373; Chancellor A. Dayton Oliphant on, IV 396-415; Governor Alfred E. Driscoll on, IV 427-445; Mrs. Julius Flink on, IV 504-505; N. J. Committee for Constitution Revision proposal for, IV 575-583; N. J. League of Women Voters on, IV 595-598; Arthur T. Vanderbilt on, IV 729-731
- COURTS, CLERKS OF, Joseph A. Davis on, IV 541-552
- COURTS, COMMON LAW, *N. J. Law Journal* on, IV 655-681
- COURTS, COOK COUNTY, ILL., EXPERIENCE, Sherwood K. Platt on, IV 707-710
- COURTS, COSTS, Joseph A. Davis on, IV 505-513
- COURTS, COUNTY, Judge William A. Smith on, IV 193-200; Milton T. Lasher on, IV 253-265; William H. Wurts on, IV 265-273; Richard B. Eckman on, IV 273-279; Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349; Chancellor A. Dayton Oliphant on, IV 396-415; Ward Kremer on, IV 446-454; Howard Ewart on, IV 454-460, 521-525; Philip Gebhardt on, IV 468-470, 526-527; Weidner Titzck on, IV 471-475; Mrs. Stuart Henderson on, IV 495-496; Mrs. W. B. Heinz on, IV 496-498; William Jilson on, IV 500-503; Mrs. Julius Flink on, IV 504-505; Joseph A. Davis on, IV 505-513; Emanuel Wagner on, IV 513-514; Louis B. LeDuc on, IV 527-530; Charles Summerill on, IV 540-541; G. W. C. McCarter on, IV 584-593; Hudson County Bar Association resolution on, IV 646-648; Camden County Bar Association report and recommendations on, IV 691-692, 693; Morris County Bar Association on, IV 706; Gerald T. Foley on, IV 721-722; N. J. Association of Chosen Freeholders on, IV 739; Union County Republican Committee on, IV 742
- COURTS, DOUBLE LITIGATION, Judge Richard Hartshorne on, IV 121-130
- COURTS, FEDERAL (see *Federal Courts*)
- COURTS, FLEXIBILITY, Governor Alfred E. Driscoll on, IV 427-445; N. J. Committee for Constitutional Research, proposal for, IV 575-583
- COURTS, HISTORY OF, Essex County Bar Association on, IV 599-645
- COURTS, NAME OF, George W. C. McCarter on, IV 490-495, 584-593; Joseph A. Davis on, IV 505-513; Lawrence A. Carton, Jr. on, IV 518-520; Louis B. LeDuc on, IV 527-530, 531-533; Samuel W. Boardman on, IV 723-724
- COURTS, NEW JERSEY, chart of present system, IV 555
- COURTS, ORGANIZATION OF, Dean Roscoe Pound on, IV 100-120
- COURTS, REVISION OF SYSTEM, *N. J. Law Journal* on, IV 655-681
- COURTS, RULE-MAKING POWER, Louis LeDuc on, IV 25; Morris M. Schmitzer on, IV 77; Dean Roscoe Pound on, IV 100-120; Russell E. Watson on, IV 150-163; Judge Daniel J. Brennan on, IV 164-183; Dean George S. Harris on, IV 183-193; Justice Frederic R. Colie on, IV 206-223; Milton T. Lasher on, IV 253-265; Attorney-General Walter D. Van Riper on, IV 281-300; Judge William F. Smith on, IV 305-328; Chancellor A. Dayton Oliphant on, IV 396-415; Judge Learned Hand on, IV 415-426; Governor Alfred E. Driscoll on, IV 427-445; Joseph A. Davis on, IV 505-513; G. W. C. McCarter on, IV 584-

- 593; N. J. League of Women Voters on, IV 595-598; Arthur T. Vanderbilt on, IV 729-731
- COURTS, SPECIALIZATION, Chancellor A. Dayton Oliphant on, IV 396-415
- COURTS, SUBJECT TO LAW, N. J. State Federation of Labor on, IV 700
- COURTS, UNIFICATION OF, Robert C. Hendrickson on, IV 5-16; Louis B. LeDuc on, IV 17-26, 527-530; Evelyn Seufert on, IV 26-37; George W. C. McCarter on, IV 38-48, 490-495, 584-593; Mrs. Stuart Henderson on, IV 55-58, 495-496; Milton B. Conford on, IV 63-67; Morris N. Schnitzer on, IV 67-77; Wadsworth Cresse, Jr. on, IV 96-99; Horace G. Brown on, IV 98-99; Dean Roscoe Pound on, IV 100-120; Judge Richard Hartshorne on, IV 121-130; Russell E. Watson on, IV 150-163; Judge Daniel J. Brennan on, IV 164-183; Dean George S. Harris on, IV 183-193; Judge William A. Smith on, IV 193-200; William J. Brennan, Jr. on, IV 201-204; Justice Frederic R. Colie on, IV 206-223; Israel B. Greene on, IV 223-231; Edward J. Gilhooly on, IV 242-253; Milton T. Lasher on, IV 253-265; William H. Wurts on, IV 265-273; Richard B. Eckman on, IV 273-279; Attorney-General Walter D. Van Riper on, IV 281-300; Judge William F. Smith on, IV 305-328; Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349, 489-490; Sol D. Kapelsohn on, IV 349-355; Edward Gaulkin on, IV 355-373; Josiah Stryker on, IV 374-388; Chancellor A. Dayton Oliphant on, IV 396-415; Judge Learned Hand on, IV 415-426; Governor Alfred E. Driscoll on, IV 427-445; Leo J. St. Clair on, IV 463-467; Fayette N. Talley on, IV 485-488; William Jilson on, IV 500-503; Mrs. Julius Flink on, IV 504-505; Morgan F. Seiffert on, IV 514-517; Robert H. Maida on, IV 520-521; Horace E. Baker on, IV 533-534; Joseph A. Davis on, IV 541-552; N. J. Committee for Constitutional Revision, proposal for, IV 575-583, on, IV 697; N. J. League of Women Voters on, IV 595-598; Essex County Bar Association on, IV 599-645; *N. J. Law Journal* on, IV 655-681; Union County Bar Association on, IV 694-696; N. J. State Federation of Labor on, IV 700; report of N. J. State Bar Association on, IV 703-704; Morris County Bar Association on, IV 706; Sherwood K. Platt on, IV 707-710; J. Seymour Montgomery, Jr. on, IV 713; Theodore McC Marsh on, IV 714-715; Frank Boscaino on, IV 718-720; N. J. State Chamber of Commerce on, IV 740; Newton Chamber of Commerce on, IV 741
- COWGILL, JOSEPH W., member of Committee on Rules, Organization and Business Affairs, V iv
- CRANE, HAROLD, appearance before Committee on the Legislative; presents views of Essex County Council of Churches and American Legion of Essex County on gambling and bingo, III 741-742; appearance before Committee on Taxation and Finance; presents views of Essex County Council of Churches on transportation of children to schools, V 802-806
- CRANSTON, ARTHUR W., appearance before Committee on the Legislative; presents views of Loyal Order of Moose on gambling, III 755
- CREAN, JOHN J., appearance before Committee on Taxation and Finance; presents views of Catholic Archdiocese of Camden on tax exemptions for charitable, educational and religious institutions and cemetery associations, V 655
- CRECCA, DANIEL J., appearance before Committee on Taxation and Finance; presents views of N. J. Motor Truck Association on dedication of funds, V 698-700
- CREDIT OF STATE (see *State Finances, Credit of State*)
- CREED, Joseph L. Bustard on definition of, III 329-330
- CRESSE, WADSWORTH, JR., appearance before Committee on the Judiciary; presents recommendations of Gloucester County Bar Association on unified court, tenure and impeachment of judges, IV 96-99
- CRIME, discussion by Committee on Rights, etc. as to exclusion from suffrage because of conviction for, III 12; Mrs. W. B. Heinz on criminal's right to vote, III 17-19; Richard P. McCormick on criminal's right to vote, III 20-22; N. J. League of Women Voters on loss of suffrage because of, III 356-361 (see also, *Suffrage*)

- CRIMES, COMMON LAW, Frank G. Schlosser on proposal to abolish prosecution for, III 180-182; Committee on Rights, etc., defeats proposal to include provision for abolishing prosecution for, III 193
- CRYSTAL, HERMAN, memorandum of, to Committee on Executive, etc., on veto of part of appropriations bill, V 447
- CULLIMORE, ALLAN C., member of Committee on Taxation and Finance, V iii
- CUSTER, RUSSELL D., appearance before Committee on the Legislative, III 758

D

- DALY, ANTHONY, appearance before Committee on Taxation and Finance; presents views on tax clause, taxation and exemption, V 729-733
- DANZIG, CHARLES, appearance before Committee on the Judiciary; discusses assignment and retirement of judges, Court of Chancery and equity, IV 534-537
- DARBY, WALTER, appearance before Committee on Taxation and Finance; presents views on municipal finances, V 727-728
- DAVIS, MRS. HERBERT, appearance before Committee on Rights, etc.; presents views of American Association of University Women of New Brunswick on periodic revision of the Constitution, III 88
- DAVIS, JOSEPH A., appearance before Committee on the Judiciary; discusses court costs, name of courts, county courts, size of courts, temporary assignment of judges, appellate court and rule-making power of courts, IV 505-513; discusses unified court, equity, judges as specialists, appeals, prerogative writs; appointment, qualifications, tenure, pension and removal of judges, Administrative Director of Courts, clerks of the courts, appellate court and Court of Chancery, IV 541-552
- DEAN, ELWOOD M., appearance before Committee on Rights, etc.; presents recommendations of Communist Party of N. J. on Bill of Rights, III 59-70
- DEBT, IMPRISONMENT FOR, Committee on Rights, etc., votes on provision, III 174
- DEBT, STATE (see *State Finances, Debt*)
- DEDICATED FUNDS, Morgan F. Larson on, V 3-28
(see also, *State Finances, Dedication of Funds*)
- DEDICATION OF FUNDS (see *State Finances, Dedication of Funds*)
- DE FEORE, ANTHONY, appearance before Committee on the Legislative; presents views of Hudson County Republican Committee, Hudson County Progressive Council, Republican Veterans' League, Young Republicans Organization of Hudson County and Republican Council of Hudson County on gambling and bingo, III 751-752
- DELANEY, JOSEPH A., member, Committee on Rights, etc., III iii
- DEPARTMENT, DEFINITION OF, Governor Alfred E. Driscoll on, V 29-46
- DEPARTMENTS, ADMINISTRATION OF, Charles R. Erdman, Jr. on, V 88-104; John Bebout on, V 112-127; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc., votes on provision for, V 205; Thomas H. Reed on, V 365-383; George Graham on, 383-389; N. J. League of Women Voters on, V 475-480
- DEPARTMENTS, HEADS, ADMINISTRATIVE, Governor Alfred E. Driscoll on, V 29-46
- DEPARTMENTS, HEADS, APPOINTMENT OF, Harold G. Hoffman on Governor's, V 46-58; A. Harry Moore on Governor's, V 62-73; Charles R. Erdman, Jr. on, V 88-104; John Bebout on, V 112-127; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Harry C. Harper on, V 191; Committee on Executive, etc., votes on provision for, V 266-268; George Condit on, V 392-395; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 498-499, 500-514; N. J. State Motor Vehicle Agents' Association on, V 521-524

DEPARTMENTS, HEADS, INVESTIGATION OF, Charles R. Erdman, Jr. on, V 88-104

DEPARTMENTS, HEADS, REMOVAL OF, A. Harry Moore on, V 62-73; Charles R. Erdman, Jr. on, V 88-104; N. J. League of Women Voters on, V 475-480

DEPARTMENTS, HEADS, TERMS, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Harry C. Harper on, V 191

DEPARTMENTS, PRINCIPAL, Harold G. Hoffman on, V 46-58; Mrs. Edwin Bebout on limit of 20, V 170-175; Committee on Executive, etc., votes provision for limit of 20, V 176, discusses provision for, V 204-205, votes provision for, V 241-243, 307, discusses limit of 20, V 307-311; James Kerney, Jr. on limit of 20, V 339-341; Carl Holderman on limit of 20, V 341-342; Thomas H. Reed on limit of 20, V 365-383; George Graham on limit of 20, V 383-389; Lewis E. Thompson on limit of 20, V 395-396; J. Goodner Gill on limit of 20, V 396-399; N. J. League of Women Voters on limit of 20, V 475-480; N. J. Committee for Constitutional Revision on limit of 20, V 498-499, 500-514; N. J. Taxpayers Association on limit of 20, V 525
(see also, *Departments, reorganization of*)

DEPARTMENTS, QUASI-INDEPENDENT, Thomas H. Reed on, V 365-383

DEPARTMENTS, REORGANIZATION OF, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Charles R. Erdman, Jr. on, V 88-104; Bennett M. Rich on, V 104-112; John Bebout on, V 112-127; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc. votes provision for limit of 20, V 176, discusses provision for, V 204-205, votes provision for, V 241-243, 405-406, 409; Williard H. Allen on, V 206-208; Thomas H. Reed on, V 365-383; George Graham on, V 383-389; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 498-499, 500-514; Frank H. Sommer on, V 529-531

DEPARTMENTS, TEMPORARY, Committee on Executive, etc., votes provision for, V 241-243

DEVELOPMENT, Ernest G. Fifield on, III 537-549; proposals of Montclair Planning Board on, III 860-863

DEVELOPMENT OF NATURAL RESOURCES, Mrs. Harold W. Corlett on, III 14-15

DEVLIN, JAMES E., JR., appearance before Committee on the Legislative; presents views of Union County Chapter of Holy Name Society, Union County Federation of Holy Name Societies and Union County Chapter of Catholic War Veterans on gambling, III 620-621

DICKEY, WILLIAM E., appearance before Committee on Taxation and Finance; presents views of N. J. Taxpayers Committee to Preserve Separation of Church and State, Presbyterian Church, U. S. A. on transportation of children to school, V 799-802

DISABLED AMERICAN VETERANS, DEPARTMENT OF NEW JERSEY, John Bill presents recommendation of, to Committee on Rights, etc., on preference for disabled veterans, III 146-148; A. Marcus Tisch presents views of, to Committee on the Legislative on bingo, III 755-756; Chris Edell presents views of, to Committee on Executive, etc., on militia, V 345-347; John W. Bill presents views of, to Committee on Taxation and Finance on tax exemption for veterans, V 681-685

DISABLED VETERANS, PREFERENCE (see *Veterans, Disabled, Preference*)

DISCRIMINATION, suggestion to Committee on Rights, etc., that clause on be considered in Suffrage section, III 12; Mrs. Lenora B. Willette on, III 42-43; Joseph L. Bustard on, III 43-47; Fred W. Martin on, III 70-73; Rev. E. S. Hardge on, III 73-74; J. Mercer Burrell on, III 89-96; James Kerney, Jr. on, III 96-101; Mrs. Robert W. Cornealson on, III 101-103; Miss Bertha Lawrence on, III 103-106; Rev. L. Hamilton Garner on, III 106-109; Jerome C. Eisenberg on, III 109-122; Carl Holderman on, III 122-132, 212-219; N. J. Council of Churches recommendations on, III 148-149, 384-385; A. LeRoy Jordon on, III 156-157; Mrs. Myra C. Hacker on, III 178-180; Committee on

- Rights, etc., votes on religious test provision, III 183, 194-195, votes on provision for, III 206; Mrs. Frank Fobert on, III 223-227; Thomas Parsonnet on, III 231-243; H. H. Tate on, III 243-248; Harold A. Lett on, III 248-253; Leo Pfeiffer on, III 253-255; Nat Brooks on, III 256-258; Jesse Moskowitz on, III 264-271; American Federation of Hosiery Workers, Branch 166 on, III 291; Communist Party of N. J. on, III 323-324; Essex County Colored Republican Council, Inc. on, III 331-332; Essex County Council of Churches on, III 333; Robert C. Hendrickson on, III 335-341; Joint Committee on Constitutional Bill of Rights on, III 343-355, on loss of tax exemption by those practicing, III 343-355; N. J. League of Women Voters on, III 356-361; N. J. State Conference of the National Association for Advancement of Colored People on, III 373; National Conference of Christians and Jews, N. J. Region, on, III 374; N. J. American Youth for Democracy on, III 375; N. J. Education Association on, III 393-394; N. J. Independent Citizens League, Nutley Chapter, on, III 406-407; N. J. State Federation of Colored Women's Clubs on, III 421-422; N. J. State Federation of Labor on, III 423-425; N. J. Women's Government Study Council on, III 435-437; State Council Against Discrimination on, III 451; United Office and Professional Workers of America, C.I.O. on, III 453, on none in use of public property, III 453, on no tax exemption for institutions practicing, III 453; Urban Colored Population Commission on, III 454-455; William Sumner Lewis Post No. 222 on, III 458-459; proposals to Committee on Rights, etc., on collective bargaining, discrimination, no discrimination in use of public property and no tax exemptions to institutions which practice discrimination, III 465
(see also, *Civil Rights*)
- DISCRIMINATION, IN MILITIA, D. H. Martin on, V 220-224; Committee on Executive, etc., discusses provision for and defers action on, V 224-232; Rev. E. S. Hardge on, V 224-232
- DISTRIBUTION OF CONSTITUTION (see *Constitution, Printing and Distribution of*)
- DIVERSION OF FUNDS (see *State Finances, Dedication of Funds*)
- DIVORCE, statement of the N. J. Conference of the Methodist Church on, III 874-877
- DIVORCE, LEGISLATIVE, Committee on the Legislative votes on provision, none to be granted, III 488, 651, 658
- DIXON, AMOS F., member, Committee on the Judiciary, IV iii
- DODGE, CHARLES J., appearance before Committee on Taxation and Finance; presents views of N. J. Society of Professional Engineers on diversion of highway funds, V 578-583
- DOUBLE JEOPARDY, Committee on Rights, etc., votes on provision, III 173
- DRENK, LESTER A., member, Committee on the Judiciary, IV iii
- DRISCOLL, GOVERNOR ALFRED E., appearance before Committee on the Judiciary; discusses independent judiciary, tenure, retirement, removal, selection and qualifications of judges, Missouri Plan of selection of judges, unified court, Supreme Court, rule-making power of courts, flexibility of courts, appeals, administration of courts, rules of evidence, parole and pardon, IV 427-445; appearance before Committee on the Executive, etc.; presents views on division of powers of government, four-year term of office for Governor, election of Governor in odd-numbered years, gubernatorial succession, veto power of Governor, election of State Auditor by Legislature, appointments by Governor, action on nominations by Senate, consolidation and reorganization of departments, Lieutenant-Governor, militia, investigatory and removal power of Governor, terms of department heads, pocket veto, election of United States Senator, veto, Court of Pardons, cabinet, administrative heads of departments, Principal Keeper of State Prison, appointment of prosecutor of the pleas, budget, and definition of department, V 29-46; letter from, to Committee on Executive, etc., on gubernatorial succession, V 321-323; appearance before Committee on Taxation and Finance; presents views on taxation, true value, assessment of property, classification of property, exemption and dedication of funds, V 770-778

- DUAL OFFICE HOLDING, Mrs. J. C. Merrill on, III 580-587
- DUE PROCESS OF LAW, Jerome S. Eisenberg on, III 109-122; Jesse Moskowitz on, III 264-271; Joint Committee on Constitutional Bill of Rights on, III 343-355
- DUFFY, RICHARD THOMAS, appearance before Committee on Rights, etc.; presents recommendations of American Legion, Department of N. J., on veterans, III 54-56
- DWYER, LAWRENCE A., appearance before Committee on the Legislative; presents views on gambling, III 623-625
- DWYER, WILLIAM A., member of Committee on Rules, Organization and Business Affairs, V iv
- DWYER, WILLIAM J., member of Committee on Taxation and Finance, V iii
- DYER, REV. CURTIS B., appearance before Committee on the Legislative; presents views on gambling and bingo, III 743-744

E

- ECKMAN, RICHARD B., appearance before Committee on the Judiciary; discusses plan for unified court, impeachment court, removal and appointment of judges, county courts and Board of Pardons, IV 273-279
- EDELL, CHRIS, appearance before Committee on Executive, etc.; presents views of Disabled American War Veterans, Department of N. J., on militia, V 345-347
- EDGAR, JOSEPH H., appearance before Committee on Taxation and Finance; presents views of American Legion, Department of N. J., on tax exemptions for veterans, V 656-664
- EDGE, FORMER GOVERNOR WALTER E., brief of, to Committee on Executive, etc., on power of the Governor and gubernatorial succession, V 448-456; letter to Committee on Executive, etc., on gubernatorial succession, V 457-458
- EDISON, FORMER GOVERNOR CHARLES, memorandum to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, Lieutenant-Governor, cabinet, veto, election of officials by Legislature, and action on nominations by Senate, V 459-461
- EDUCATION, N. J. League of Women Voters on, III 356-361, recommendations of, on, III 849-854; N. J. State Federation of Teachers on contractual status of teachers, III 427; N. J. Women's Government Study Council on use of school buildings, III 435-437; Miss Bertha Lawrence on, V 562-563; Charles A. Brown on, V 625-635; Joseph G. Higgins on, V 635-638; Mrs. Irene Baldwin on, V 747-749; Jacob Fox on, V 751-758; recommendations of N. J. State Federation of Labor on, V 893
(see also, *State School Fund*)
- EDUCATION, RELIGIOUS INSTITUTIONS, Leo Pfeiffer on tax exemption, V 809-813
- EDUCATION, STATE AID FOR, recommendations of N. J. State Federation of Labor on, III 885-887; Charles A. Brown on, V 625-635; Jacob Fox on, V 751-758
- EDUCATION, TRANSPORTATION OF PUPILS, Weidner Titzck on, V 789-799; William E. Dickey on, V 799-802; Harold A. Crane on, V 802-806; Mrs. Irene Baldwin on, V 808-809; R. Robinson Chance on, V 844-846; letter of George J. Hart on, V 848; memorandum of N. J. Council of Churches on, V 863-865; letter of State of N. J. Federation of American Patriotic Societies on, V 866-868
- EDUCATIONAL INSTITUTIONS, TAX EXEMPTION, John A. Matthews on, V 651-655; John J. Crean on, V 655; Augustine V. Gribbin on, V 655-656; John N. Nolan on, V 656; Russell E. Watson on, V 733-737
- EGGERS, FRANK H., member, Committee on Executive, etc., V iii
- EISENBERG, JEROME C., appearance before Committee on Rights, etc.; pre-

- sents recommendations of Joint Committee on Constitutional Bill of Rights on equal protection of law, due process, discrimination, civil rights, collective bargaining, and color, III 109-122
- ELECTIONS, Mrs. W. B. Heinz on paupers, criminals and absentee voting, III 17-19, on Governor and legislators in odd-numbered years, III 17-19; Richard P. McCormick on paupers, idiots, insane persons and criminals, III 20-22; Mrs. Frank Fobert on, III 223-227; N. J. League of Women Voters on, III 356-361; Irving Leuchter on independent parties, III 614-617; Committee on the Legislative recommends inclusion of clause on time of holding, III 655; Frank Boscaino on, IV 718-720
(see also, *Assembly, Members, Apportionment; Assembly, Members, Election; Legislature, Members; Legislature, Members, Election; Senate, Members, Election; Suffrage; Voting, Absentee; Voting Age*)
- ELECTIONS, NOMINATIONS, N. J. Committee for Constitutional Revision, Committee on Research and Drafting, on, III 377-383
- ELIZABETH, BOARD OF EDUCATION OF, Joseph G. Higgins presents views of, to Committee on Taxation and Finance on taxation, assessment of property, taxation of railroads, and schools, V 635-638
- ELIZABETH, CITY COUNCIL OF, resolution to Committee on Taxation and Finance on assessment of property, V 847
- EMERSON, SIGURD A., member, Committee on Taxation and Finance, V iii
- EMPLOYEES, STATE, COMPENSATION, Committee on Executive, etc., votes provision for schedule, V 302-307
- EMPLOYEES, STATE, TENURE, Committee on Executive, etc., votes provision for, V 302-307
- EMPLOYEES, STATE, TERM, Committee on Executive, etc., votes provision for schedule, V 302-307
- ENGLISH, MRS. ADA J., appearance before Committee on Taxation and Finance; presents views of N. J. Library Association and Library Trustees' Association of N. J. on free public libraries, V 685-688
- ENZER, H. A., letter to Committee on Submission and Address on printing and publication of Constitution, V 957-958
- EQUAL PROTECTION OF LAW, Jerome C. Eisenberg on, III 109-122; Communist Party of N. J. on, III 323-324
- EQUAL RIGHTS, inclusion of "women" recommended to Committee on Rights, etc., after "men" in Article I, paragraph 1, "Rights and Privileges," III 5; "men" to include "women," recommended to Committee on Rights, etc., III 6; suggestion to Committee on Rights, etc., that clause on be considered in Suffrage section, III 12; Miss Mary Philbrook and Miss May M. Lyons on, III 38-39; Mrs. Lenora B. Willette on, III 42-43; Mrs. Richard Zwemer on, III 74-76; Mrs. W. B. Heinz on, III 76-77; Miss Gaetana Mahan on, III 77-78; Mrs. Carpenter on, III 82-84; Mrs. Robert W. Cornealson on, III 101-103; Carl Holderman on, III 122-132; Mrs. Geraldine S. Thompson on, III 167; Mrs. Myra C. Hacker on, III 178-180; Committee on Rights, etc., votes on provision for, III 206-207; Communist Party of N. J. on, III 323-324; Consumers' League of N. J. on, III 325-328; Senator Albert W. Hawkes on, III 334; N. J. Federation of Women's Clubs on, III 404-405; N. J. State Bar Association on status of women, III 412-413; N. J. State Federated Egg Producers Cooperative Association, Inc., on, III 416-417; N. J. State Federation of Business and Professional Women's Clubs, Inc., on, III 418-419, 420; N. J. State Federation of Labor on, III 423-425; Organized Women Legislators of N. J. on, III 438; Women's Alliance for Equal Status on, III 462-464
(see also, "*Men*")
- EQUITY, Dean Roscoe Pound on, IV 100-120; Chief Justice Clarence E. Case on, IV 131-150; Judge Daniel J. Brennan on, IV 164-183; Dean George S. Harris on, IV 183-193; Justice Frederic R. Colie on, IV 206-223; Israel B. Greene on, IV 223-231; Samuel Kaufman on, IV 231-240; Edward J. Gilhooly on, IV 240-253; Milton T. Lasher on, IV 253-265; Attorney-General Walter D. Van Riper on, IV 281-300; Judge William F. Smith on, IV 305-328; James Kerney, Jr. on, IV

340-349; Edward Gaulkin on, IV 355-373; Josiah Stryker on, IV 374-388; H. Collins Minton, Jr. on, IV 389-391; Chancellor A. Dayton Oliphant on, IV 396-415; Judge Learned Hand on, IV 415-426; Ward Kremer on, IV 446-454; Howard Ewart on, IV 454-460; Harry R. Cooper on, IV 460-461; Frederick E. Lombard on, IV 461-463; Louis B. LeDuc on, IV 531-533; Charles Danzig on, IV 534-537; Joseph A. Davis on, IV 541-552; Essex County Bar Association on, IV 599-645; Judge Guy L. Fake on, IV 683-688
(see also, *Chancery, Court of*)

ERDMAN, CHARLES R., JR., appearance before Committee on Executive, etc.; presents views of N. J. Committee for Constitutional Revision on four-year term for Governor, gubernatorial succession, veto, power of Governor to investigate and remove department heads, consolidation and reorganization of departments, appointment of department heads, budget, state finances, Acting Governor, Lieutenant-Governor, powers of the Governor, Assembly districts, administration of departments, and action by Senate on nominations, V 88-104

ERRORS AND APPEALS, COURT OF, Sol Kantor on, IV 736-738

ESSEX COUNTY, Curtis C. Colwell presents views of, to Committee on the Legislative on excess condemnation and zoning for counties, III 499-508

ESSEX COUNTY BAR ASSOCIATION, Harold Simandl appears before Committee on the Judiciary on behalf of, IV 62-63; report of committee on unified court and Court of Chancery discussed by Milton B. Conford, IV 63-95, and by Morris M. Schnitzer, IV 67-77; report of special committee concerning constitutional revision of the Judicial Article, submitted to Committee on the Judiciary—presents material and recommendations on unified court, court of appeals, Supreme Court; selection, election, appointment, terms, tenure, qualifications, retirement, pensions, removal and assignment of judges; review of writs, prerogative writs, appeals, history of the courts, Court of Chancery, specialization in the judiciary, and equity, IV 599-645

ESSEX COUNTY BOARD OF RABBIS, Rabbi Louis Levitzky presents views of, to Committee on the Legislative on gambling, III 740-741

ESSEX COUNTY COLORED REPUBLICAN COUNCIL, J. Mercer Burrell presents recommendations of, to Committee on Rights, etc., on discrimination and civil rights, III 89-96; resolution to Committee on Rights, etc., on discrimination, III 331-332

ESSEX COUNTY COUNCIL OF CHURCHES, resolution to Committee on Rights, etc., on discrimination, III 333; Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732; Harold Crane presents views of, to Committee on the Legislative on gambling and bingo, III 741-742; letter to Committee on the Legislative, on legislative procedure, III 819; Harold A. Crane presents views of, to Committee on Taxation and Finance on transportation of children to schools, V 802-806

EVANS, JOHN F., appearance before Committee on the Legislative; discusses municipal government and home rule, III 508-517; presents views of City of Paterson on home rule, III 706-711; statement on local government, III 820-843

EVERSON, A. R., appearance before Committee on Taxation and Finance; presents views of N. J. Taxpayers Association on dedication of funds, tax limitation, tax exemption and single budget, V 543, on taxation, assessment of property, dedication of funds, single fund, single fiscal year and exemption from taxation, V 741-747

EVIDENCE, wording of clause on, discussed by Committee on Rights, etc., III 5-6

EVIDENCE, RULES OF, Chancellor A. Dayton Oliphant on, IV 396-415; Judge Learned Hand on, IV 415-426; Governor Alfred E. Driscoll on, IV 427-445

EWART, HOWARD, appearance before Committee on the Judiciary; presents views of Ocean County Bar Association and Ocean County Lawyers' Club on court of appeals, justices of the peace, county courts, Court of Chancery, equity, and appointment of vice-chancellors, IV 454-460, on justices of the peace, county courts, court of appeals, Court of Chancery and appointment of vice-chancellors, IV 521-525; presents own views on quorum of court of appeals, retirement of judges, review of writs and appointment of judges, IV 521-525

- EWING, PAUL, appearance before Committee on Taxation and Finance; presents views of City of New Brunswick on tax exemption, V 545-554
- EXCESS CONDEMNATION (see *Condemnation, Excess*)
- EXECUTIVE ASSISTANT, Committee on Executive, etc., discusses provision for, V 140
- EXECUTIVE CLEMENCY (see *Pardons*)
- EXECUTIVE, MILITIA AND CIVIL OFFICERS, COMMITTEE ON, members of, V iii; organization meeting, V 1-2; proceedings of, V 1-418; appendix to proceedings, V 419-531; William Miller named as technician and draftsman for Committee, V 1
- EXEMPTION, TAX (see *Taxation, exemptions*)
- EX POST FACTO LAW, Committee on the Legislative votes on provision, III 488, provides none be passed, III 652, 658

F

- FAHY, FRANCIS X, appearance before Committee on the Legislative; presents views of Associated Veterans and Fraternal Groups of Hudson County on bingo, gambling, pari-mutuel betting and horse-racing, III 550-557; presents views of State Department of Catholic War Veterans of N. J. on gambling, pari-mutuel betting, horse-racing and bingo, III 630-632; presents views of Catholic War Veterans of the State of N. J. on gambling and bingo, III 738-739
- FAIR EMPLOYMENT PRACTICES COMMITTEE, N. J. State Federated Egg Producers Cooperative Association, Inc. on, III 416-417
- FAKE, JUDGE GUY L., letter to Committee on the Judiciary, on the Court of Chancery and equity, IV 683-688
- FALCEY, WILLIAM H., appearance before Committee on Taxation and Finance; presents views of American Veterans Committee on tax exemption for veterans, V 673-676
- FARLEY, FRANK S., member, Committee on Executive, etc., V iii
- FEDERAL COURTS, Judge William F. Smith on, IV 305-328; Chancellor A. Dayton Oliphant on, IV 396-415; Judge Learned Hand on, IV 415-426; Judge Thomas Madden on, IV 475-484
- FEDERATION OF NEW JERSEY THEATRES, statement to Committee on the Legislative, on bingo, III 844
- FELLER, MILTON A., member and vice-chairman, Committee on Executive, etc., V iii
- FERRY, LELAND F., member, Committee on Rights, etc., III iii
- FIFIELD, ERNEST G., appearance before Committee on the Legislative; presents views of Montclair Planning Board on zoning, county zoning, development and redevelopment of cities, and street maps, III 537-549
- FINANCES, MUNICIPAL (see *Municipalities, finances*)
- FINANCES, STATE (see *State Finances*)
- FINES, Committee on Rights, etc., votes on provision for, III 173-174
- FISCAL CONTROL, BY GOVERNOR, Harry W. Wolkstein on, V 556-560
- FISCAL OFFICERS, DUTIES OF, Harry W. Wolkstein on, V 556-560
- FISCAL YEAR, STATE (see *State Finances, Single Fiscal Year*)
- FLINK, MRS. JULIUS, appearance before Committee on the Judiciary; presents views of N. J. Conference of National Council of Jewish Women on unified court, administration of courts, removal of judges, and county courts, IV 504-505
- FOBERT, MRS. FRANK, appearance before Committee on Rights, etc.; presents views of N. J. League of Women Voters on collective bargaining, III 40-42, on use of "persons" instead of "men," anti-discrimination clause, state use of private property, collective bargaining, elections, absentee voting, amendments and periodic revision of Constitution, III 223-227

- FOLEY, GERALD T., letter to Committee on the Judiciary, on county courts, IV 721-722
- FOX, JACOB, appearance before Committee on Taxation and Finance; presents views of Newark Board of Education on state aid for education, taxation, railroad taxation, and tax clause, V 751-758
- FRATERNAL ORDER OF EAGLES, Russell Stanton presents views of, to Committee on the Legislative on bingo and gambling, III 742-743
- FREEDOM FROM ARREST, Committee on Rights, etc., defers action on provision for, III 168, votes provision for, III 184-185
- FREEDOM OF ASSEMBLY, Committee on Rights, etc., votes on provision for, III 174
- FREEDOM OF SPEECH, Committee on Rights, etc., votes on provision for, III 167, votes provision for, III 183-184; Allied Theatre Owners of N. J., Inc. propose to Committee on Rights, etc., that it include any mode of communication, III 290; N. J. Women's Government Study Council on, III 435-437
- FREEDOM OF WORSHIP, Committee on Rights, etc., votes on provision for, III 167
- FREEHOLDERS, BOARDS OF CHOSEN, resolution of N. J. Association of Chosen Freeholders on inclusion of in Constitution, V 492
- FRIEDRICH, DR. PAUL A., appearance before Committee on the Legislative; presents views of New Brunswick Council of Churches on gambling, pari-mutuel betting and bingo, III 560-564
- FRYE, CHARLES O., appearance before Committee on the Legislative; presents views on citizen participation in government, State Auditor, and State Librarian, III 685-688; presents views of American Citizenship Foundation on taxation and assessment of property, V 806, 808
- FULLERTON, DR. WILLIAM E., appearance before Committee on the Legislative; presents views of Hudson Methodist Parish on gambling, III 528-530
- FUNDS, DEDICATION OF (see *State Finances, Dedication of Funds*)
- FUREY, PETER T., appearance before Committee on the Legislative; presents resolution of Hudson County Holy Name Federation of the Newark Diocesan Federation on gambling, III 557-559

G

- GAFFNEY, WILLIAM J., appearance before Committee on Taxation and Finance; presents views of N. J. Highway Users' Conference and N. J. Petroleum Industries Committee on dedication of highway funds, V 576-578; presents views of N. J. Highway Users' Conference on dedication of funds, V 702-720
- GAMBLING, Rev. Frank Bateman Stanger on, III 158, 448-450; N. J. Council of Churches on, III 384-385; N. J. Women's Government Study Council on, III 435-437; Committee on the Legislative votes to defer action on provision for pari-mutuel betting, III 488, defers action on provision for, III 652, votes alternative propositions for, III 654, provides alternative provisions for, III 658; resolution on, to Committee on the Legislative, by 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., V. F. W., Conception Post No. 1188, Chin Strap Post, 29th Div. Association, III 490-491; Dr. Marvin W. Green on, III 517-528, 632-635, 726-732; Dr. William E. Fullerton on, III 528-530; Charles Merklein on, III 530-537; Francis X. Fahy on, III 550-557, 630-632, 738-739; Peter T. Furey on, III 557-559; Maurice A. Walsh, Jr. on, III 559-560; Dr. Paul A. Friedrich on, III 560-564; Robert C. Hendrickson on, III 592-613; Rev. Edward Lute on, III 617-620; James Devlin on, III 620-621; Rev. Arthur Laroy Peterson on, III 621-623; Lawrence A. Dwyer on, III 623-625; Rev. Harland T. Gant on, III 625-626; Rev. Harry L. Bowlby on, III 626-630; Charles Handler

- on, III 638-640, 732-738; Attorney-General Walter D. Van Riper on, III 661-675; Rev. Leopold Schneider on, III 739-740; Rabbi Louis Levitzky on, III 740-741; Harold Crane on, III 741-742; Russell Stanton on, III 742-743; Rev. Curtis B. Dyer on, III 743-744; George Gold on, III 744-745; Samuel S. Swackhammer on, III 745-748; John Winans on, III 748-751; Anthony De Feore on, III 751-752; Charles Becker on, III 752-755; Arthur W. Cranston on, III 755; A. Marcus Tisch on, III 755-756; Rev. Alex Shore on, III 756; Rev. Page M. Beverly on, III 756-758; resolution of Allied Theatre Owners of N. J., Inc. on, III 792-793; resolution of Atlantic City Ministerial Union on, III 802-803; letter of Robert Carey on, III 809-812; resolution of Bergen County Chapter, Catholic War Veterans, Inc. on, III 813-814; resolution of Conception Post No. 1188, Catholic War Veterans, on, III 815; letter of N. J. State Department of Catholic War Veterans, Inc., on, III 816-817; letter of Sgt. Joseph J. Sadowski, C. M. H. Post No. 492, Catholic War Veterans, Inc., on, III 818; statement of the Federation of N. J. Theatres on bingo, III 844; proposal of Hudson County Republican Committee on bingo, III 845, on, 846-847, resolution on bingo, III 848; letter of Men of Trinity Methodist Church on, III 855-856; statement of the N. J. Conference of the Methodist Church on, III 874-877; letter of N. J. Conference of the Methodist Church, Bridgeton District, on, III 878; resolution of Executive Committee of the N. J. Council of Churches on, III 879; resolution of N. J. State Elks Association on, III 884
- GANT, REV. HARLAND T., appearance before Committee on the Legislative; presents views of New Brunswick Council of Churches and N. J. Conference of the Methodist Church on gambling, III 625-626
- GARNER, REV. L. HAMILTON, appearance before Committee on Rights, etc.; presents recommendations of Joint Committee on Constitutional Bill of Rights on discrimination, III 106-109
- GAULKIN, EDWARD, appearance before Committee on the Judiciary; discusses Court of Chancery, unified court, equity, declaratory judgments, magistrate's courts, administration of courts, court of appeals, and appeals, IV 355-373
- GEBHARDT, PHILIP R., appearance before Committee on the Judiciary; presents views of Hunterdon County Bar Association on Court of Chancery, county courts, qualification of judges, and justices of the peace, IV 468-470, on Court of Chancery and county courts, IV 526-527
- GEMBERLING, ARTHUR R., SR., member and chairman, Committee on Rules, Organization and Business Affairs, V iv
- GENERAL COURT, N. J. League of Women Voters on, IV 595-598
- GILHOOLY, EDWARD J., appearance before Committee on the Judiciary; discusses equity, Court of Chancery, and unified court, IV 240-253
- GILL, J. GOODNER, appearance before Committee on Executive, etc.; presents views on gubernatorial succession, limitation of departments to 20, cabinet and veto, V 396-399
- GILLETTE, MRS. ARTHUR C., appearance before Committee on Rights, etc.; presents views of N. J. League of Women Voters on amendments, and periodic revision of Constitution, III 27-28
- GLASS, RONALD D., member, Committee on Rights, etc., III iii
- GLENN, ALFRED T., appearance before Committee on the Judiciary; presents views of N. J. Magistrates' Association on justices of the peace, IV 503-504
- GLOUCESTER COUNTY BAR ASSOCIATION, recommendations on unified court, tenure and impeachment of judges presented by Wadsworth Cresse, Jr. and Horace G. Brown, IV 96-99; statement submitted to Committee on the Judiciary on appeals, tenure and impeachment of judges, IV 649
- GOLD, GEORGE, appearance before Committee on the Legislative; presents views of N. J. Federation of Theatres on gambling and bingo, III 744-745
- GOLD STAR WIVES, resolution to Committee on the Legislative, on gambling, III 490-491
- GOODWIN, FRED W., appearance before Committee on the Legislative; presents views of N. J. Taxpayers Association on mandatory laws for local governments, III 694-698

- GOVERNMENT, CITIZEN PARTICIPATION IN, Charles O. Frye on, III 685-688
- GOVERNMENT, DISTRIBUTION OF POWERS, discussion on, by Committee on Rights, etc., III 12; Committee on Rights, etc., votes on provision for, III 23-24, votes on, III 161
- GOVERNMENT, OVERTHROW OF, Committee on Rights, etc., refers to Governor, for legislative action, proposal to restrict persons who advocate, III 198
- GOVERNOR, ABSENCE FROM STATE OR INABILITY TO ACT, Committee on Executive, etc., votes provision for, V 331-332
- GOVERNOR, ACTING, Charles R. Erdman, Jr., on, V 88-104; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 498-499, 500-514
(see also, *Legislature, officers*)
- GOVERNOR, APPOINTMENTS, George Condit on, III 691-694; Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; A. Harry Moore on, V 62-73; George Graham on, V 383-389; N. J. League of Women Voters on, V 475-480; N. J. State Federation of Labor on, V 518
(see also, *Departments, Heads, Appointment of: Nominations*)
- GOVERNOR, APPOINTMENTS, AD INTERIM, Committee on Executive, etc., defers action on provision for, V 60, votes provision for, V 327-328; Thomas H. Reed on, V 365-383
- GOVERNOR, CABINET, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; John Bebout on, V 112-127; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc., votes on provision for, V 205, 266, votes on, V 407; Carl Holderman on, V 341-342; Thomas H. Reed on, V 365-383; George Graham on, V 383-389; Mrs. Ralph Barnehenn on, V 389-390; J. Goodner Gill on, V 396-399; memorandum of Charles Edison on, V 459-461; letter of Sol Kantor on, V 474; N. J. State Federation of Labor on, V 518
- GOVERNOR, CONSECUTIVE TERMS (see *Gubernatorial Succession*)
- GOVERNOR-ELECT, FAILURE TO QUALIFY, Committee on Executive, etc., votes provision for, V 331-332
- GOVERNOR, ELECTION, Mrs. W. B. Heinz on, III 17-19; Governor Alfred E. Driscoll on, in odd-numbered years, V 29-46; Committee on Executive, etc., votes provision for, V 59, 312, votes on provision for schedule, V 298-302; Bennett M. Rich on, in odd-numbered years, V 104-112; Mrs. Charles Kellers on, in odd-numbered years, V 132-136; Thomas H. Reed on, in odd-numbered years, V 365-383; N. J. League of Women Voters on, in odd-numbered years, V 475-480; N. J. Committee for Constitutional Revision on, in odd-numbered years, V 498-499; N. J. Manufacturers Association on, in odd-numbered years, V 516-517
- GOVERNOR, EXECUTION OF LAWS BY, John Bebout on, V 112-127; Committee on Executive, etc., votes on provision for, V 408
- GOVERNOR, EXECUTIVE ASSISTANT TO (see *Executive Assistant*)
- GOVERNOR, EXECUTIVE POWER VESTED IN, Committee on Executive, etc., votes provision for, V 59, 311
- GOVERNOR, FISCAL CONTROL, Harry W. Wolkstein on, V 556-560
- GOVERNOR, IMPEACHMENT (see *Impeachment*)
- GOVERNOR, INVESTIGATIONS BY, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Charles R. Erdman, Jr. on, V 88-104; John Bebout on, V 112-127; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Harry C. Harper on, V 191; Committee on Executive, etc., votes provision for, V 270-280, 332-333; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 500-514
- GOVERNOR, LIEUTENANT (see *Lieutenant-Governor*)
- GOVERNOR, PARDON POWER (see *Pardons*)
- GOVERNOR, POWERS OF, Committee on Executive, etc., votes provision for, V 60, 327; Charles R. Erdman, Jr. on, V 88-104; John Bebout on, V 112-127;

- Sol Kapelsohn on, V 150-157; Thomas H. Reed on, V 365-383; George Graham on, V 383-389; brief of Walter E. Edge on, V 448-456; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 498-499, 500-514
(see also, *special headings under Governor*)
- GOVERNOR, QUALIFICATIONS, Committee on Executive, etc., votes provisions for, V 59, 311
- GOVERNOR, REMOVAL POWER, Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Charles R. Erdman, Jr. on, V 88-104; Thomas H. Reed on, V 365-383; George Graham on, V 383-389; Committee on Executive, etc. votes on provision for judicial review of, V 415; N. J. League of Women Voters on, V 475-480
- GOVERNOR, REORGANIZATION OF DEPARTMENTS BY, Committee on Executive, etc., votes provision for, V 405-406, 409
- GOVERNOR, RESPONSIBILITIES OF, Fred E. Schluter on, V 343-344
- GOVERNOR, SALARY, Committee on Executive, etc., votes provision for, V 59, 326-327
- GOVERNOR, SPECIAL SESSIONS, CALL FOR (see *Legislature, Sessions, Special*)
- GOVERNOR, TAKING OFFICE, Bennett M. Rich on date of, V 104-112
- GOVERNOR, TERM, Sol Kantor on, IV 736-738, letter of, on, V 474; Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Committee on Executive, etc., votes provision for four-year term, V 59, discusses provision for, V 312-320; A. Harry Moore on, V 62-73; Charles R. Erdman, Jr. on, V 88-104; Bennett M. Rich on, V 104-112; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Sol Kapelsohn on, V 150-157; Harry C. Harper on, V 191; Robert Carey on, V 206; Carl Holderman on, V 341-342; Thomas H. Reed on, V 365-383; memorandum of Charles Edison on, V 459-461; N. J. League of Women Voters on, V 475-480; recommendation of N. J. State Chamber of Commerce on, V 493; N. J. Committee for Constitutional Revision on, V 498-499; N. J. Manufacturers Association on, V 516-517; N. J. State Federation of Labor on, V 518; Frederick A. Potter on, V 526
- GOVERNOR, VACANCY IN OFFICE, Morgan F. Larson on, V 3-28; Bennett M. Rich on, V 104-112; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc., discusses and votes on provision for, V 139, votes provision for, V 324-326; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 498-499, 500-514
- GOVERNOR, VETO POWER, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Charles R. Erdman, Jr. on, V 88-104; Bennett M. Rich on, V 104-112; John Bebout on, V 112-127; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc., votes on provision for, V 328-331, 403-404, 413, 417; James Kerney, Jr. on, V 339-341; Carl Holderman on, V 341-342; Thomas H. Reed on, V 365-383; George Graham on, V 383-389; J. Goodner Gill on, V 396-399; memorandum of Herman Crystal on, V 447; memorandum of Charles Edison on, V 459-461; N. J. League of Women Voters on, V 475-480; recommendation of N. J. State Chamber of Commerce on, V 493; N. J. Committee for Constitutional Revision on, V 498-499, 500-514; N. J. Manufacturers Association on, V 516-517; N. J. State Federation of Labor on, V 518
- GRAHAM, GEORGE, appearance before Committee on Executive, etc., on behalf of New Jersey Committee for Constitutional Revision; presents views on powers of Governor, gubernatorial succession, appointments by Governor, veto, reorganization of departments, limitation of departments to 20, administration of departments, power of removal by Governor, cabinet, and Civil Service, V 383-389
- GRAND JURY, PRESENTMENT BY (see *Presentment, Grand Jury*)
- GRANTS, Committee on Rights, etc., votes on separate section for, III 25
- GREATER NEWARK, C.I.O. COUNCIL, George Greenleaf presents recom-

- mendations of, to Committee on Rights, etc., on amendment, periodic revision of the Constitution, collective bargaining, and rights of labor, III 132-137
- GREEN, DR. MARVIN W., appearance before Committee on the Legislative; presents views of Reformed Synod of N. J., North Hudson Ministerial Association, Jersey City Clergy Club, Newark Annual Methodist Conference and Hudson Methodist Parish on gambling, bingo, pari-mutuel betting and horse-racing, III 517-528; presents views of Hudson Methodist Parish on gambling, pari-mutuel betting, bingo and horse-racing, III 632-635; presents views of N. J. Council of Churches, N. J. Council of Church Women, N. J. Council of Religious Education, Essex County Council of Churches, Newark Ministerial Association, Afro-American Assembly of N. J., Hudson County Parish, Jersey City Clergy Club and North Hudson Protestant Clergy Club on gambling and bingo, III 726-732
- GREENE, ISRAEL B., appearance before Committee on the Judiciary; presents editorial views of *N. J. Law Journal* on unified court, Court of Chancery and equity, IV 223-231
- GREENLEAF, GEORGE, appearance before Committee on Rights, etc.; presents recommendations of Greater Newark C.I.O. Council on amendment, periodic revision of the Constitution, collective bargaining and rights of labor, III 132-137
- GREENVILLE AMVETS, INC., N. J., POST NO. 2, resolution to Committee on the Legislative on gambling, III 490-491
- GRIBBIN, AUGUSTINE V., appearance before Committee on Taxation and Finance; presents view of Catholic Diocese of Trenton on tax exemption for charitable, educational and religious institutions and cemetery associations, V 655-656
- GRIFFITH, MRS. B. G., appearance before Committee on the Judiciary; presents recommendations of N. J. League of Women Voters on administration of courts, IV 60-61
- GRIGGS, JOHN W., appearance before Committee on the Legislative; presents views of N. J. State Aviation Commission on zoning for airports and recommends county zoning, III 636-638
- GUBERNATORIAL SUCCESSION, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46, 321-323; Harold G. Hoffman on, V 46-58; Committee on Executive, etc., defers action on provision for, V 59, 176, discusses and votes on provision for, V 244-251, discusses and votes on provision for limitation of, V 251-262; discusses provision for, V 312-320, votes provision for, V 331, votes on provision for, V 408; A. Harry Moore on, V 62-73; Charles R. Erdman, Jr. on, V 88-104; Bennett M. Rich on, V 104-112; John Bebout on, V 112-127; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Sol Kapelsohn on, V 150-157; Harry C. Harper on, V 191; Mr. Corbin on, V 192; Robert Carey on, V 206; James Kerney, Jr. on, V 339-341; Carl Holderman on, V 341-342; Thomas H. Reed on, V 365-383; George Graham on, V 383-389; J. Goodner Gill on, V 396-399; brief of Walter E. Edge on, V 448-456, letter of, on V 457-458; memorandum of Charles Edison on, V 459-461; letter of Leslie H. Jamouneau on, V 462-473; letter of Sol Kantor on, V 474; N. J. League of Women Voters on, V 475-480; recommendation of N. J. State Chamber of Commerce on, V 493; N. J. Committee for Constitutional Revision on, V 498-499; N. J. Manufacturers Association on, V 516-517; N. J. State Federation of Labor on, V 518; Frederick A. Potter on, V 526; I. Grant Scott on, V 527-528

H

- HABEAS CORPUS, WRIT OF, need to clarify language on suspension of, pointed out to Committee on Rights, etc., III 9; discussion by Committee on Rights, etc., on, III 15; Committee on Rights, etc., votes on provision for, III 173
- HACKER, MRS. MYRA C., member, Committee on the Legislative, III iii; appearance before Committee on Rights, etc.; presents views of Society of Constitutional Security, Chapter 1, on periodic revision of Constitution,

- amendment, "persons" to be used instead of "men" in Constitution, race or color, and discrimination, III 178-180
- HALLIGAN, MRS. H. K., appearance before Committee on the Judiciary; presents recommendations of N. J. League of Women Voters on selection and tenure of judges, IV 59-60
- HAND, JUDGE LEARNED, appearance before Committee on the Judiciary; discusses federal courts, unified courts, equity, jury trials, Administrative Director of Courts, rule-making power of courts, rules of evidence, tenure, removal and retirement of judges, IV 415-426
- HANDLER, CHARLES, appearance before Committee on the Legislative; presents views of N. J. State Elks on gambling and bingo, III 638-640, 732-738; discusses zoning and condemnation, III 732-738
- HANNOCH, HERBERT J., appearance before Committee on the Judiciary; discusses recommendations of N. J. State Bar Association on prerogative writs, IV 48-55; discusses prerogative writs and review of writs, IV 537-539; presents proposal of Prerogative Writ Committee of N. J. State Bar Association on prerogative writs, IV 594
- HANSEN, LEWIS G., member, Committee on Executive, etc., V iii
- HARDGE, REV. E. S., appearance before Committee on Rights, etc.; presents views of National Association for the Advancement of Colored People of N. J. (NAACP) on discrimination, III 73-74; appearance before Committee on Executive, etc.; presents views of NAACP on discrimination in the militia, V 224-232
- HARPER, HARRY C., letter to Committee on Executive, etc., on appointment of department heads by Governor, terms of department heads, investigatory power of the Governor, four-year term and succession for Governor, V 191
- HARRIS, DEAN GEORGE S., appearance before Committee on the Judiciary; discusses unified court, prerogative writs, equity, impeachment, retirement and tenure of judges, administration of courts, and rule-making power of courts, IV 183-193
- HART, GEORGE J., letter to Committee on Taxation and Finance on transportation of children to schools, V 848
- HARTSHORNE, JUDGE RICHARD, appearance before Committee on the Judiciary; discusses double litigation and unified court, IV 121-130; memorandum to Committee on the Judiciary on double litigation, IV 650-654
- HASTINGS, GEORGE, appearance before Committee on Submission and Address; presents views on publication and distribution of Constitution and summary, V 972-977
- HAWKES, SENATOR ALBERT W., letter to Committee on Rights, etc., on equal rights for women, III 334
- HEALTH, PUBLIC, N. J. League of Women Voters on, III 356-361, recommendations of, on, III 849-854
- HEINZ, MRS. W. B., appearance before Committee on Rights, etc.; discusses recommendations of N. J. League of Women Voters on elections of Governor and legislators in odd-numbered years, elimination of word "male" in Constitution, reducing voting age to 18, elimination of county residence requirement for voting, proportional representation, and paupers, criminals and absentee voting in connection with elections, III 17-19; presents views of, on equal rights of women, III 76-77; appearance before Committee on the Judiciary; discusses recommendation of N. J. League of Women Voters on selection and tenure of judges, IV 58-59; discusses county courts, IV 496-498; appearance before Committee on Executive, etc.; commends Committee on behalf of N. J. League of Women Voters for draft of article on Executive, Militia and Civil Officers, V 344-345
- HENDERSON, MRS. STUART, appearance before Committee on the Judiciary; presents recommendations of N. J. League of Women Voters on unified court, IV 55-58, on unified court, county courts and appointment of judges, IV 495-496

HENDRICKSON, ROBERT C., appearance before Committee on Rights, etc.; presents brief on responsibility for citizenship, trial by jury in lunacy matters, collective bargaining, rights of labor, amendment, and periodic revision of the Constitution, III 168-171; statement to Committee on Rights, etc., on Bill of Rights, right to restrain any violation of the Constitution, use of "persons" instead of "men" in Constitution, right of trial by jury, public use of private land, discrimination, collective bargaining, duties of citizens, amendment, and periodic revision of the Constitution, III 335-341; appearance before Committee on the Legislative; presents views of N. J. Committee for Constitutional Revision on limitation on legislative sessions, salaries of legislators, biennial sessions, four-year terms for Senators, two-year terms for Assemblymen, elections in odd-numbered years, appointment of legislators to State office, appointment of executive officers by the Legislature, lobbying, legislative council, zoning, condemnation, mandatory legislation, legislative procedure and gambling, III 592-613; appearance before Committee on the Judiciary; discusses proposals made by Revision Commission of 1942; recommends unified court system with Supreme Court, Appellate Division of Superior Court, Superior Court with law and equity sections, judges to hear matters involving both; tenure for judges, selection of judges and study of Missouri System, Chief Justice as responsible administrative head with administrative director assisting, IV 5-16; appearance before Committee on Taxation and Finance; presents views on taxation, dedication of funds, appropriations, single budget, debt, assessment of property, exemptions, exemptions for veterans, standards of value, classification of property and true value, V 599-609

HIGGINS, JOSEPH G., appearance before Committee on Taxation and Finance; presents views of Elizabeth Board of Education on taxation, assessment of property, taxation of railroads, and schools, V 635-638

HIGHWAY FUNDS, DEDICATION OF (see *State Finances, Dedication of Funds*)

HIGHWAY FUNDS, DIVERSION (see *State Finances, Dedication of Funds*)

HILL, DR. J. O., appearance before Committee on Rights, etc., III 88-89

HILLTOP AMVETS POST NO. 83, resolution to Committee on the Legislative on gambling, III 490-491

HOFFMAN, FORMER GOVERNOR HAROLD G., appearance before Committee on Executive, etc.; presents views on four-year terms and succession for Governor, veto, Court of Pardons, pardon, parole, appointment by Governor of department heads and term of office, election of State Auditor by Legislature, militia, cabinet, number of department heads, Principal Keeper of State Prison, budget, Lieutenant-Governor, action by Senate on nominations, vacancy in offices of county clerk and surrogate, distribution of powers of government, and removal of officers, V 46-58

HOLDERMAN, CARL, appearance before Committee on Rights, etc.; presents recommendations of N. J. State Industrial Union Council, C.I.O. and of Joint Committee on Constitutional Bill of Rights on collective bargaining and discrimination; on behalf of N. J. State Industrial Union Council, C.I.O. only, on equal rights of women, amendment and periodic revision of the Constitution, III 122-132; presents views of N. J. Industrial Union Council, C.I.O. and N. J. Committee on Constitutional Revision on collective bargaining, rights of labor, discrimination, amendment and periodic revision of Constitution, III 212-219; appearance before Committee on Executive, etc.; presents views of N. J. Industrial Union Council, C.I.O. on four-year term for Governor, gubernatorial succession, veto, limitation of departments to 20, and cabinet, V 341-342

HOLY NAME SOCIETY, UNION COUNTY CHAPTER, James Devlin, Jr. presents views of, to Committee on the Legislative on gambling, III 620-621

HOMER HARKNESS MARINE CORPS LEAGUE, resolution to Committee on the Legislative on gambling, III 490-491

HOME RULE, John F. Evans on, III 508-517, 706-711, statement by (with George Miller) on, III 820-843; John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 688-691; Dr. Thomas Reed on, III 712-726; Theodore Widemere on, III

- 758-759; James Smith on, III 759-762; letter and resolution of Township of Millburn on, III 857-859; proposals of N. J. Committee for Constitutional Revision on, III 866-871, recommendations of, on, III 872-873; recommendations of N. J. Industrial Union Council, C.I.O. on, III 888; letter of N. J. State League of Municipalities on, III 889-890; A. Harry Moore on, V 62-73
- HORSE-RACING (*see Gambling*)
- HOUSING PUBLIC, N. J. League of Women Voters on, III 356-361; N. J. State Federation of Labor on, III 423-425, recommendations of N. J. League of Women Voters on, III 849-854; letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882
- HUDSON COUNTY BAR ASSOCIATION, represented by William T. Cahill before Committee on the Judiciary, IV 95; resolution to Committee on the Judiciary, on court of appeals, appeals, Court of Chancery, county courts, bi-partisan appointment of judges, appointment of jury commissioners, and removal of judges, IV 646-648
- HUDSON COUNTY HOLY NAME FEDERATION OF THE NEWARK DIOCESAN FEDERATION, Peter T. Furey presents resolution of, to Committee on the Legislative on gambling, III 557-559
- HUDSON COUNTY PROGRESSIVE COUNCIL, Anthony De Feore presents views of, to Committee on the Legislative, on gambling and bingo, III 751-752
- HUDSON COUNTY REPUBLICAN COMMITTEE, Anthony De Feore presents views of, to Committee on the Legislative, on gambling and bingo, III 751-752; proposal to Committee on the Legislative, on bingo, III 845, on gambling, III 846-847; resolution to Committee on the Legislative, on bingo, III 848
- HUDSON METHODIST PARISH, Dr. Marvin W. Green presents views of, to Committee on the Legislative on gambling, bingo, pari-mutuel betting, and horse-racing, III 517-528, 632-635, on gambling and bingo, III 726-732; Dr. William E. Fullerton presents views of, to Committee on the Legislative on gambling, III 528-530; Rev. Edward Lute presents views of, to Committee on the Legislative on gambling, III 617-620; Rev. Arthur Laroy Peterson presents views of, to Committee on the Legislative on gambling, III 621-623; Rev. Leopold Schneider presents views of, to Committee on the Legislative on gambling and bingo, III 739-740
- HUNT, THOMAS E., appearance before Committee on Taxation and Finance; presents views of City of Newark on taxation and assessment of property, V 750-751
- HUNTER, N. W., appearance before Committee on the Judiciary; discusses guarantee of trial by jury, IV 513; letter to Committee on the Judiciary, on supervision of judges, right of jury and right of appeal, IV 701-702
- HUNTERDON COUNTY BAR ASSOCIATION, Philip R. Gebhardt presents views of, to Committee on the Judiciary on Court of Chancery, county courts, qualifications of judges, and justices of the peace, IV 468-470, discusses views of, before Committee on the Judiciary on Court of Chancery and county court, IV 526-527; Charles Summerill presents views of, to Committee on the Judiciary on county courts, IV 540-541; resolution to Committee on the Judiciary, on Court of Chancery and qualifications of judges, IV 690
- HUTCHINSON, FRANK B., appearance before Committee on Submission and Address; presents views on publication of Constitution, V 977

I

- IDIOTS (*see Suffrage*)
- IMBRIE, JAMES, appearance before Committee on Rights, etc.; presents views of N. J. Independent Citizens' League on amendment, civil rights and collective bargaining, III 227-230
- IMPEACHMENT, Committee on Executive, etc., votes on provision for, V 138-139, 295-298
- IMPEACHMENT, COURT OF, William H. Wurts on, IV 265-273; Richard B. Eckman on, IV 273-279

INDICTMENTS, Committee on Rights, etc., votes on separate section for, III 25, votes to defer action on provision for, III 173, votes on provision for, III 185, 201-202; Arthur T. Vanderbilt on review of, IV 729-731

INHERITANCE TAXES (see *Taxation, Inheritance Taxes*)

INITIATIVE, clause recommended to Committee on Rights, etc., III 5; Irving Leuchter on, III 29-33; James W. Arrowsmith on, III 33, memorandum on, III 794-799; Miss Bertha Lawrence on, III 103-106; Committee on Rights, etc., defeats proposal for provision for, III 192-193; N. J. Education Association on, III 393-394; N. J. State Federation of Labor on, III 423-425; N. J. State Industrial Union Council, C.I.O. on, III 429-433; Arthur N. Pierson on, III 439; United Office and Professional Workers of America, C.I.O. on, III 453; Thomas L. Parsonnet on, V 127-132

INMUNITY, WAIVER OF, Mrs. J. C. Merrill on, V 167-170; N. J. League of Women Voters on, V 475-480

INSANE PERSONS (see *Mental Incompetency, Jury Trial; Suffrage*)

INSTITUTIONS, PENAL AND CORRECTIONAL, Frank Boscaino on, IV 718-720

INTERGOVERNMENTAL RELATIONS, Harry W. Wolkstein, on V 556-560

INVESTIGATIONS, Mrs. J. C. Merrill on, V 167-170

(see also, *Governor, Investigations by; Legislature, Investigations by*)

INVESTIGATIONS, GUBERNATORIAL (see *Governor, Investigations by*)

INVESTIGATIONS, LEGISLATIVE (see *Legislature, Investigations by*)

J

JACOBS, JOSEPH, summary of proposals for revision of Judicial Article, IV 747-755

JACOBS, NATHAN L., member and vice-chairman, Committee on the Judiciary, IV iii

JAMOUNEAU, LESLIE H., appearance before Committee on the Legislative; presents views on salaries of legislators, legislative procedure, and appointment or election of legislators to state office, III 698-705; letter to Committee on Executive, etc., on gubernatorial succession, V 462-473

JERSEY CITY CLERGY CLUB, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling, bingo, pari-mutuel betting, and horse-racing, III 517-528, on gambling and bingo, III 726-732

JEWISH WAR VETERANS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY, resolution to Committee on Rights, etc., on rights and privileges for veterans, III 342; Gabriel Kurtzenbaum presents views of, to Committee on Executive, etc., on militia, V 357-358; resolution to Committee on Taxation and Finance, on tax exemption for veterans, V 849

JILSON, WILLIAM, appearance before Committee on the Judiciary; discusses unified court, county courts, appointment of judges, and Judicial Council, IV 500-503

JOINT COMMITTEE ON CONSTITUTIONAL BILL OF RIGHTS, Rev. L. Hamilton Garner presents views of, to Committee on Rights, etc., on discrimination, III 106-109; Jerome C. Eisenberg presents recommendations of, to Committee on Rights, etc., on equal protection of the laws, due process of law, discrimination, civil rights, collective bargaining, and color, III 109-122; Carl Holderman presents recommendations of, to Committee on Rights, etc., on collective bargaining and discrimination, III 122-132; H. H. Tate presents views of, to Committee on Rights, etc., on discrimination in civil rights, III 243-248; Leo Pfeiffer presents views of, to Committee on Rights, etc., on discrimination in civil rights, and condemnation of property, III 253-255; memorandum and draft of proposed amendments of, to Committee on Rights, etc., on religious test, discrimination, due process of law, collective bargaining, loss of tax exemptions by institutions, etc., which practice discrimination, civil rights, III 343-355

- JORDAN, ARCHIBALD N., letter to Committee on the Judiciary, on printing of record on appeal, IV 716, on printing of record on appeal, appeals, qualifications of judges, IV 725-726
- JORDAN, A. LEROY, appearance before Committee on Rights, etc.; presents recommendations of Urban Colored Population Commission, State of New Jersey, on civil rights and discrimination, III 156-157
- JORGENSEN, CHRISTIAN J., member, Committee on the Legislative, III iii
- JUDGES, Louis LeDuc on full-time, IV 17-26
- JUDGES, APPOINTMENT, Judge Daniel J. Brennan on, IV 164-183; Milton T. Lasher on, IV 253-265; Richard B. Eckman on, IV 273-279; Attorney-General Walter D. Van Riper on, IV 281-300; Judge William F. Smith on, IV 305-328; James Kerney, Jr. on, IV 340-349, 489-490; Josiah Stryker on, IV 374-388, 727-728; Mrs. Stuart Henderson on, IV 495-496; William Jilson on, IV 500-503; Robert H. Maida on, IV 520-521; Howard Ewart on, IV 521-525; Louis B. LeDuc on, IV 527-530; Joseph A. Davis on, IV 541-552; N. J. Committee for Constitutional Revision proposal for, IV 575-583; G. W. C. McCarter on, IV 584-593; N. J. League of Women Voters on commission for, IV 595-598, statement of, on, IV 698; Essex County Bar Association on, IV 599-645; Hudson County Bar Association resolution on, IV 646-648; *N. J. Law Journal* on, IV 655-681; Camden County Bar Association report and recommendations on, IV 691-692, 693; Arthur T. Vanderbilt on, IV 729-731; Sol Kantor on, IV 736-738; Morgan F. Larson on, V 3-28
(see also, *Judicial Council*)
- JUDGES, ASSIGNMENT, George W. C. McCarter on, IV 490-495, 584-593; Joseph A. Davis on, IV 505-513; Robert H. Maida on, IV 520-521; Charles Danzig on, IV 534-537; Essex County Bar Association on, IV 599-645; Union County Bar Association on, IV 694-696
- JUDGES, ELECTION, Alexander F. Ormsby on, IV 328-339; Essex County Bar Association on, IV 599-645; N. J. State Federation of Labor on, IV 700; Thomas L. Parsonnet on, V 127-132
- JUDGES, IMPEACHMENT, Wadsworth Cresse, Jr. on, IV 96-99; Dean George S. Harris on, IV 183-193; Gloucester County Bar Association on, IV 649; Union County Bar Association on, IV 694-696; Committee on Executive, etc., recommends provision for, V 280-281
- JUDGES, PENSIONS, Russell E. Watson on, IV 150-163; Justice Frederic R. Colie on, IV 206-223; Alexander F. Ormsby on, IV 328-339; Joseph A. Davis on, IV 541-552; Essex County Bar Association on, IV 599-645
- JUDGES, QUALIFICATIONS, Josiah Stryker on, IV 374-388; Governor Alfred E. Driscoll on, IV 427-445; Philip R. Gebhardt on, IV 468-470; Weidner Titzck on, IV 471-475; Joseph A. Davis on, IV 541-552; N. J. League of Women Voters on, IV 595-598; Essex County Bar Association on, IV 599-645; resolution of Hunterdon County Bar Association on, IV 690; Camden County Bar Association report and recommendations on, IV 691-692, 693; Archibald N. Jordan on, IV 725-726; Sol Kantor on, IV 736-738
- JUDGES, REMOVAL, Justice Frederic R. Colie on, IV 206-223; Milton T. Lasher on, IV 253-265; Richard B. Eckman on, IV 273-279; Attorney-General Walter D. Van Riper on, IV 281-300; Judge William F. Smith on, IV 305-328; Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349; Sol D. Kapelsohn on, IV 349-355; Judge Learned Hand on, IV 415-426; Governor Alfred E. Driscoll on, IV 427-445; Fayette N. Talley on, IV 485-488; George W. C. McCarter on, IV 490-495, 584-593; Mrs. Julius Flink on, IV 504-505; Joseph A. Davis on, IV 541-552; N. J. Committee for Constitutional Revision proposal for, IV 575-583; Essex County Bar Association on, IV 599-645; Hudson County Bar Association resolution on, IV 646-648
- JUDGES, RETIREMENT, Chief Justice Clarence E. Case on, IV 131-150; Judge Daniel J. Brennan on, IV 164-183; Dean George S. Harris on, IV 183-193; Justice Frederic R. Colie on, IV 206-223; Milton T. Lasher on, IV 253-265; Judge William F. Smith on, IV 305-328; Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349; Judge Learned Hand on, IV 415-426; Governor Alfred E. Driscoll on, IV 427-445; Judge Thomas Madden on, IV 475-

- 484; Fayette N. Talley on, IV 485-488; George W. C. McCarter on, IV 490-495, 584-593; Ward Kremer on, IV 498-500; Emanuel Wagner on, IV 513-514; Morgan R. Seiffert on, IV 514-517; Howard Ewart on, IV 521-525; Joseph F. Walsh on, IV 525-526; Louis B. LeDuc on, IV 531-533; Charles Danzig on, IV 534-537; John D. Laddie on, IV 539-540; Robert Carey on, IV 541-543; N. J. Committee for Constitutional Revision proposal for, IV 575-583; Essex County Bar Association on, IV 599-645; *N. J. Law Journal* on, IV 655-681; Union County Bar Association on, IV 694-696
- JUDGES, SALARY, Louis B. LeDuc on, IV 17-26; Alexander F. Ormsby on, IV 328-339; Josiah Stryker on, IV 374-388
- JUDGES, SELECTION, Robert C. Hendrickson on, IV 5-16; Mrs. Winfield B. Heinz on, IV 58-59; Mrs. H. K. Halligan on, IV 59-60; Alexander F. Ormsby on, IV 328-339; Governor Alfred E. Driscoll on, IV 427-445; N. J. Committee for Constitutional Revision proposal for, IV 575-583; Essex County Bar Association on, IV 599-645; N. J. League of Women Voters on Commission on Judicial Appointment, IV 698
- JUDGES, SELECTION, MISSOURI PLAN, Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349; Governor Alfred E. Driscoll on, IV 427-445
- JUDGES, SPECIALISTS, Ward Kremer on, IV 446-454; Frederick E. Lombard on, IV 461-463; Judge Thomas Madden on, IV 475-484; Joseph A. Davis on, IV 541-552; N. J. Committee for Constitutional Revision proposal for, IV 575-583; Essex County Bar Association on, IV 599-645
- JUDGES, SUPERVISION OF, N. W. Hunter on, IV 701-702
- JUDGES, TENURE, Robert C. Hendrickson on, IV 5-16; Louis B. LeDuc on, IV 17-26; Evelyn Seufert on, IV 26-37; George W. C. McCarter on, IV 38-48; Mrs. Winfield B. Heinz on, IV 58-59; Mrs. H. K. Halligan on, IV 59-60; Wadsworth Cresce, Jr. on, IV 96-99; Russell E. Watson on, IV 150-163; Judge Daniel J. Brennan on, IV 164-183; Dean George S. Harris on, IV 183-193; Justice Frederic R. Colie on, IV 206-223; Milton T. Lasher on, IV 253-263; William H. Wurts on, IV 265-273; Attorney-General Walter D. Van Riper on, IV 281-300; Judge William F. Smith on, IV 305-328; Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349; Sol D. Kapelsohn on, IV 349-355; Judge Learned Hand on, IV 415-426; Governor Alfred E. Driscoll on, IV 427-445; Weidner Titzck on, IV 471-475; Judge Thomas Madden on, IV 475-484; Joseph A. Davis on, IV 541-552; N. J. League of Women Voters on, IV 595-598; Essex County Bar Association on, IV 599-645; Gloucester County Bar Association on, IV 649; *N. J. Law Journal* on, IV 655-681; Camden County Bar Association report and recommendation on, IV 691-692, 693; N. J. Committee for Constitutional Revision on, IV 697; Arthur T. Vanderbilt on, IV 729-731; Drury W. Cooper on, IV 734
- JUDGES, TERM, Sol D. Kapelsohn on, IV 349-355; N. J. Committee for Constitutional Revision proposal for, IV 575-583; Essex County Bar Association on, IV 599-645; Sol Kantor on, IV 736-738
- JUDGMENTS, DECLARATORY, Edward Gaulkin on, IV 355-373
- JUDICIAL ARTICLE, SUMMARY OF, proposals for revision of, prepared by Joseph Jacobs, IV 747-755
- JUDICIAL COUNCIL, Evelyn Seufert on, IV 26-37; William Jilson on, IV 500-503; N. J. Committee for Constitutional Revision proposal for, IV 575-583; John Bebout on, V 112-127
- JUDICIAL POWER, Judge William F. Smith on, IV 305-328
- JUDICIAL REVIEW (see *Prerogative Writs*)
- JUDICIAL SELECTION (see *Judges, Selection*)
- JUDICIARY, COMMITTEE ON THE, members of, IV iii; proceedings, IV iii-iv, 1-552; appendix to proceedings, IV 553-755
- JUDICIARY, INDEPENDENT, Governor Alfred E. Driscoll on, IV 427-445
- JURY, suggested to Committee on Rights, etc., that "men" in Constitution be changed to "jurors" and Legislature may authorize trial for mental competency without jury, III 8, that trial by may be waived in civil cases, III 8; Committee on Rights, etc., votes to replace "jurors" with "persons," III 201;

- N. J. State Conference of the National Association for the Advancement of Colored People on property qualifications, III 373
- JURY COMMISSIONERS, Hudson County Bar Association, resolution on, IV 646-648
- JURY TRIAL, waiver in civil cases, III 8; Committee on Rights, etc., defers action on provision for, III 168; Robert C. Hendrickson on, III 335-341; Alexander F. Ormsby on, IV 328-339; Judge Learned Hand on, IV 415-426; George W. C. McCarter on, IV 490-495; N. W. Hunter on, IV 513, 701-702
- JURY, TRIAL, CRIMINAL CASES, Committee on Rights, etc., defers action on provision for, III 168; votes on provision for, III 172-173
- JURY, TRIAL, MENTAL INCOMPETENCY, Robert C. Hendrickson on, III 168-171; Committee on Rights, etc., votes provision for trial without, III 185, 194; Alberto Collins on, III 322
- JURY TRIALS, VERDICTS, Samuel J. Marantz on, IV 743-746
- JUSTICES OF THE PEACE, N. J. League of Women Voters on, III 356-361; William H. Wurts on, IV 265-273; Howard Ewart on, IV 454-460, 521-525; Philip R. Gebhardt on, IV 468-470; Weidner Titzck on, IV 471-475; Alfred T. Glenn on, IV 503-504; Charles Summerill on, IV 540-541; Camden County Bar Association report and recommendations on, IV 691-692, 693; N. J. Magistrates Association on, IV 699; Sol Kantor on, IV 736-738
- JUVENILE DELINQUENCY, Douglas H. MacNeil on relation to voting age, III 370-372

K

- KAMMERMAN, ARTHUR C., appearance before Committee on Submission and Address; presents views on publication and distribution of Constitution and summary, V 967-977
- KANTOR, SOL, letter to Committee on the Judiciary, on Court of Errors and Appeals, Supreme Court, Appellate Division, Circuit Court, justices of the peace; qualifications, term and appointment of judges, terms of Governor and members of the Legislature, IV 736-738; letter to Committee on Executive, etc., on term of Governor, gubernatorial succession, cabinet, and election and tenure of county and local officials, V 474
- KAPELSOHN, SOL D., appearance before Committee on the Judiciary; presents views of N. J. State Industrial Union Council, C.I.O. on unified court, uniform system of police courts, Court of Chancery, term of office, tenure and removal of judges, IV 349-355; appearance before Committee on Executive, etc.; presents views of N. J. State Industrial Union Council, C.I.O. on four-year term, succession and power of Governor, V 150-157
- KATZENBACH, MRS. MARIE H., member, Committee on Rights, etc., III iii
- KAUFMAN, SAMUEL, appearance before Committee on the Judiciary; discusses Court of Chancery, equity, prerogative writs, and appeals, IV 231-240
- KELLERS, MRS. CHARLES F., appearance before Committee on Rights, etc., III 43; appearance before Committee on Executive, etc.; presents views of N. J. League of Women Voters on Governor: four-year term, election in odd-numbered years, succession, vacancy in office; Lieutenant-Governor, cabinet, appointment of department heads, action on nominations by Senate, veto, investigations by Governor, pardon; reorganization, consolidation and administration of departments, V 132-136
- KELLY, WILLIAM D., appearance before Committee on Taxation and Finance; presents views on assessment and collection of inheritance taxes, V 541
- KERNEY, JAMES, JR., appearance before Committee on Rights, etc.; presents views of N. J. Committee for Constitutional Revision on discrimination, religious test, collective bargaining, amendments, and periodic revision of the Constitution, III 96-101; appearance before Committee on the Judiciary; discusses report of 1942 Commission on Revision, unified court, Court of Chancery, equity; appointment, tenure, removal and retirement of judges; county courts, Board of Pardons, Missouri Plan for selection of judges, and administration of courts, IV 340-349; presents views of N. J. Committee for

- Constitutional Revision on unified court and appointment of judges, IV 489-490; appearance before Committee on Executive, etc.; presents views of N. J. Committee for Constitutional Revision on veto, limitation of departments to 20, and gubernatorial succession, V 339-341; appearance before Committee on Taxation and Finance; presents views of N. J. Committee for Constitutional Revision on single fund, single budget and dedication of funds, V 646-650
- KERR, ERNEST, appearance before Committee on Submission and Address; presents views on distribution of Constitution and summary, V 958-966
- KIEB, ORMONDE A., appearance before Committee on Taxation and Finance; presents views of N. J. Association of Real Estate Boards on taxation, assessment of property, true value, classification of property and tax exemption, V 786-788
- KILPATRICK, EDWARD W., appearance before Committee on Taxation and Finance; presents views of State Federation of District Boards of Education of N. J. on taxation and assessment of property, V 728-729
- KING, A. PAUL, appearance before Committee on Taxation and Finance; presents views of State Association of Boards of Freeholders on dedication of funds, V 700-702
- KREMER, WARD, appearance before Committee on the Judiciary; presents views of Monmouth County Bar Association on Court of Chancery, need for specialization in judiciary, equity, court of appeals, and county courts, IV 446-454, on Court of Chancery, prerogative writs, and retirement of judges, IV 498-500
- KURTZENBAUM, GABRIEL, appearance before Committee on Executive, etc.; presents views of Jewish War Veterans, Department of N. J., on militia, V 357-358

L

- LABOR RIGHTS, George Greenleaf on, III 132-137; Robert C. Hendrickson on, III 168-171; Committee on Rights, etc., votes on provision for, III 202; Carl Holderman on, III 212-219; Anthony Vitrone on, III 219-220; Thomas Parsonnet on, III 231-243; Arthur Torrey on, III 261-262; Kirk Brown on, III 316; N. J. Independent Citizens League, Nutley Chapter, on, III 406-407 (see also, *Collective Bargaining and Picketing*)
- LABOR RIGHTS, PUBLIC EMPLOYEES (see *Public Employees*)
- LADDIE, JOHN D., appearance before Committee on the Judiciary; discusses retirement age of judges, IV 539-540
- LANCE, WESLEY L., member, Committee on the Legislative, III iii
- LAND, USE RESTRICTIONS, N. J. State Conference of the National Association for the Advancement of Colored People on, III 373
- LARGE, EDWIN K., appearance before Committee on Rights, etc.; opposes inclusion of privileges in Constitution, III 153-155
- LARSON, FORMER GOVERNOR MORGAN F., appearance before Committee on Executive, etc.; discusses biennial sessions of Legislature, election of members of Assembly for two-year terms and of members of Senate for four-year terms, gubernatorial succession and four-year term of office for Governor, veto power of Governor, appointment of judges by Governor, succession to office of Governor in case of vacancy, Lieutenant-Governor, confirmation of appointments by Senate, Court of Pardons, cabinet, reorganization of state departments, terms of department heads, budget, appointment of fiscal officers, dedicated funds, appointments by Governor, pocket veto, investigatory powers of Governor, militia, Adjutant-General and Quartermaster-General, Principal Keeper of State Prison, veto of items in appropriations bill, V 3-28
- LASHER, MILTON T., appearance before Committee on the Judiciary; presents plan of Bergen County Bar Association on unified court, appellate court, equity, county courts, tenure, appointment, retirement and removal of judges, and rule-making power of courts, IV 253-265
- LAW ENFORCEMENT, Charles Merklein on, III 530-537
- LAW REPORTS, William Abbotts on, IV 735

- LAWRENCE, MISS BERTHA, appearance before Committee on Rights, etc.; discusses views of N. J. Education Association on state pensions as contractual obligations, civil service in Constitution, discrimination, initiative, and referendum, III 103-106; appearance before Committee on Taxation and Finance; presents views of N. J. Education Association on schools, education, State School Fund, and assessment of property, V 562-563
- LAWS, Committee on the Legislative votes on provisions on bills of attainder and *ex post facto* laws, III 488
(see also, *Attainder, Bill of; Ex Post Facto Law; Contracts, Impairing Obligation of, Law*)
- LAWS, EQUAL PROTECTION OF (see *Equal Protection of Laws*)
- LAWS, MANDATORY (see *Mandatory Legislation*)
- LAWS, SPECIAL, PRIVATE OR LOCAL, Committee on the Legislative votes provision in part, and defers actions of balance, III 489, 495-496, provides none to be passed, III 652-653, votes on provision concerning, III 659; William H. Connell on, III 492-494
- LAWS, REVENUE (see *Legislature, Procedure*)
- LAWS, REVISION OF, Committee on the Legislative votes not to include provision for continuous revision, III 654
- LEDUC, LOUIS B., appearance before Committee on the Judiciary; discusses proposals made by N. J. Committee for Constitutional Revision; recommends unified courts, Chief Justice to administer courts, court of appeals, rule-making power of courts, full-time judges, adequate compensation and tenure for judges, IV 17-26; on unified court, appointment of judges, county court and name of court, IV 527-530; on name of court, retirement age of judges, Court of Chancery and equity, IV 531-533
- LEE, REV. JESSE L., appearance before Committee on the Legislative, III 758
- LEGISLATIVE ARTICLE, text of report of Commission on Revision, May 1952, excerpts, III 773-783; text of proposed revised Constitution of 1944, excerpts, III 784-791
- LEGISLATIVE, COMMITTEE ON THE, members of, III iii-iv; organization meeting, III 471-479; proceedings of, III 469-770; appendix to proceedings, III 771-899; approves tentative draft of Legislative article, III 765-767, 768-769, 770
- LEGISLATIVE COUNCIL, Committee on the Legislative votes not to provide provision for, III 497; John Bebout on, III 565-580; Robt C. Hendrickson on, III 592-613; Irving Leuchter on, III 614-617; recommendations of the N. J. Committee for Constitutional Revision on, III 872-873; recommendations of N. J. Industrial Union Council, C.I.O. on, III 888
- "LEGISLATIVE LIGHTNING," John Bebout on, III 565-580; recommendations of N. J. State Federation of Labor on, III 885-887
- LEGISLATIVE PROCEDURE (see *Legislature, Procedure*)
- LEGISLATURE (see *Assembly districts; Legislative Council; and Lobbying*)
- LEGISLATURE, APPOINTMENTS BY, Committee on the Legislative votes provision prohibiting election or appointment by Legislature of executive, administrative or judicial officers, III 498
(see also, *State Auditor; Officers, Executive*)
- LEGISLATURE, COMMITTEE SYSTEM, letter of Essex County Council of Churches on, III 819
(see also, *Caucus; Legislature, Procedure*)
- LEGISLATURE, DIVORCE (see *Divorce, Legislative*)
- LEGISLATURE, INVESTIGATIONS BY, John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587, 688-691; Irving Leuchter on, III 614-617
- LEGISLATURE, "LEGISLATIVE LIGHTNING" (see "*Legislative lighting*")
- LEGISLATURE, MEMBERS, Committee on the Legislative votes on provision for qualifications of, III 481, for election of, III 481-482, for oaths by, III 653-654; Rudolph Vogel, Jr., on doing business with State or municipal government,

- III 486; Robert C. Hendrickson on appointment to state office, III 592-613; Leslie H. Jamouneau on appointment or election to state office, III 698-705; letter of Kirk Brown on dual office holding, III 807-808; recommendations of N. J. League of Women Voters on dual office holding, III 849-854, on composition of, III 849-854; letter of Thomas D. Taggart, Jr. on acceptance of rewards and dual office holding, III 893-899
(see also, *Dual Office Holding; Proportional Representation*)
- LEGISLATURE, MEMBERS, APPOINTMENT, Committee on the Legislative votes provision on, to civil positions and election to other offices, III 484
- LEGISLATURE, MEMBERS, ELECTION, Mrs. W. B. Heinz on, III 17-19; Mrs. J. C. Merrill on, in odd-numbered years, III 580-587; Robert C. Hendrickson on, in odd-numbered years, III 592-613; Irving Leuchter on, in odd-numbered years, III 614-617; recommendations of the N. J. Committee for Constitutional Revision on, III 872-873
(see also, *Assembly, Members, Elections; Senate, Members, Election*)
- LEGISLATURE, MEMBERS, OATHS, Committee on the Legislative votes on provision for, III 489, 659
- LEGISLATURE, MEMBERS, PRIVILEGES, Committee on the Legislative votes provision on, but defers action on provision for privileges during committee hearings, III 483-484
- LEGISLATURE, MEMBERS, QUALIFICATIONS, Committee on the Legislative votes on provision for, III 484
(see also, *Assembly, Members, Qualifications; Senate, Members, Qualifications*)
- LEGISLATURE, MEMBERS, SALARIES, John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587, 688-691; Robert C. Hendrickson on, III 592-613; Irving Leuchter on, III 614-617; Committee on the Legislative votes on provision for, III 647-648, votes provision for, III 657; Leslie H. Jamouneau on, III 698-705; Dr. Thomas Reed on, III 712-726; recommendations of N. J. League of Women Voters on, II 849-854; views of N. J. State Chamber of Commerce on, III 883; recommendations of N. J. State Federation of Labor on, III 885-887
- LEGISLATURE, MEMBERS, TERMS, views of the N. J. State Chamber of Commerce on, III 883; recommendations of N. J. State Federation of Labor on, III 885-887; recommendations of N. J. Industrial Union Council, C.I.O. on, III 888; Sol Kantor on, IV 736-738
(see also, *Assembly, Members, Terms; Senate, Members, Terms*)
- LEGISLATURE, OFFICERS, Committee on the Legislative makes recommendation, not to act while serving as Acting Governor, III 654-655
- LEGISLATURE, OFFICERS, OATHS, Committee on the Legislative votes on provision for, III 489
- LEGISLATURE, POWERS, Committee on the Legislative votes on provision for, III 481, 646, 657
- LEGISLATURE, PROCEDURE, Committee on the Legislative votes provision for, III 482-483, defers action, on passage of bills and resolutions, III 483, votes on provision for revenue bills, III 488, votes on provision for, III 488, recommends provision for, III 497-498, votes on provision for, III 646-647, 648-649; votes provision for, III 652, 657, 658, votes on provision for, III 658-659; John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587, 688-691; Robert C. Hendrickson on, III 592-613; Irving Leuchter on, III 614-617; Leslie H. Jamouneau on, III 698-705; Dr. Thomas Reed on, III 712-726; letter of Essex County Council of Churches on, III 819; recommendations of N. J. League of Women Voters on, III 849-854; recommendations of the N. J. Committee for Constitutional Revision on, III 872-873; recommendations of N. J. Industrial Union Council, C.I.O. on, III 888; letter of Thomas D. Taggart, Jr. on, III 893-899
- LEGISLATURE, SALARIES, Committee on the Legislative discusses and defers action on, III 483
- LEGISLATURE, SESSIONS, John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587; Robert C. Hendrickson on limitation of, and biennial, III 592-

- 613; Committee on the Legislative provides no limit on length, III 654; views of N. J. State Chamber of Commerce on, III 883; Morgan F. Larson on biennial, V 3-28
- LEGISLATURE, SESSIONS, ANNUAL, Committee on the Legislative defers action on length of, III 482, votes on provision for, III 482; Mrs. J. C. Merrill on, III 688-691; Dr. Thomas Reed on, III 712-726; recommendations of N. J. League of Women Voters on, III 849-854
- LEGISLATURE, SESSIONS, SPECIAL, Committee on the Legislative defers action on, III 482, recommends action on provision for automatic, after adjournment to consider vetoed bills, III 496-497, votes provision for, III 654; defers action on automatic sessions to consider vetoes, III 654, votes provisions for, III 657, votes on provision for consideration of vetoes, III 659, recommends provision for consideration of veto messages, III 763; Mrs. J. C. Merrill on, III 688-691; recommendations of N. J. League of Women Voters on, III 849-854; Thomas H. Reed on, V 365-383
- LEGISLATURE, SESSIONS, SPECIAL, POWER OF GOVERNOR TO CALL, Committee on Executive, etc. defers action on provision for, V 60
- LEGISLATURE, TERM (see *Assembly, Members, Terms; Senate, Members, Terms*)
- LEGISLATURE, VACANCIES (see *Senate, Vacancies*)
- LEONARD, LEON, member and secretary, Committee on the Legislative, III iii-iv
- LE ROY, GIBSON, appearance before Committee on Rights, etc.; presents views of State, County and Municipal Workers on collective bargaining, III 220-223; appearance before Committee on Executive, etc.; presents views of N. J. Council of State, County and Municipal Workers on labor rights of public employees and civil service, V 157-167
- LETT, HAROLD A., appearance before Committee on Rights, etc.; presents views of N. J. Division Against Discrimination on discrimination in civil rights, III 248-253
- LEUCHTER, IRVING, appearance before Committee on Rights, etc.; presents views of N. J. State Industrial Union Council, C.I.O. on amendments, periodic revision of Constitution, and initiative, III 29-33; appearance before Committee on the Legislative; presents views of N. J. State Industrial Union Council, C.I.O. on two-year terms for Assemblymen, four-year terms for Senators, election in odd-numbered years, salaries for legislators, investigatory power of the Legislature, legislative procedure, legislative council, election of independent parties and Assembly districts, III 614-617
- LEVITZKY, RABBI LOUIS, appearance before Committee on the Legislative; presents views of Essex County Board of Rabbis on gambling, III 740-741
- LEWIS, ARTHUR W., member and vice-chairman, Committee on the Legislative, III iii-iv
- LIBRARIAN, STATE (see *State Librarian*)
- LIBRARIES, FREE PUBLIC, Mrs. Ada J. English on, V 685-688; Morgan Baradale on, V 779-781
- LIBRARY TRUSTEES' ASSOCIATION OF NEW JERSEY, Mrs. Ada J. English presents views of, to Committee on Taxation and Finance on free public libraries, V 685-688
- LICENSES, PROFESSIONAL, Herbert Quittner on, III 441
- LIEUTENANT-GOVERNOR, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; A. Harry Moore on, V 62-73; Charles R. Erdman, Jr. on, V 88-104; Bennett M. Rich on, V 104-112; Thomas L. Parsonnet on, V 127-132; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc., defeats provision for, V 139; Mrs. Ralph Barnehenn on, V 389-390; letter of Consumers' League of N. J. on, V 445-446; memorandum of Charles Edison on, V 459-461; N. J. League of Women Voters on, V 475-480
- LIGHTNER, MILTON C., member of Committee on Taxation and Finance, V iii

- LIQUOR, statement of the N. J. Conference of the Methodist Church on, III 874-877
- LITIGATION, DOUBLE, Judge Richard Hartshorne on, IV 650-654
- LLOYD, FRANCIS V. D., member of Committee on Submission and Address, V iv; letter to Committee on Submission and Address on printing and publication of Constitution, V 957
- LOBBYING, Committee on the Legislative votes not to include provision for, III 497; Robert C. Hendrickson on, III 592-613; letter of Thomas D. Taggart, Jr. on, III 893-899
- LOCAL GOVERNMENT, statement by John F. Evans and George J. Miller on, III 820-843; recommendations of N. J. League of Women Voters on, III 849-854; proposals of N. J. Committee for Constitutional Revision on, III 866-871
(see also, *Mandatory Legislation*)
- LOCAL LAWS (see *Laws, Special, Private or Local*)
- LOMBARD, FREDERICK E., appearance before Committee on the Judiciary; discusses equity, Court of Chancery, and judicial specialization, IV 461-463
- LORD'S DAY ALLIANCE OF THE UNITED STATES, Rev. Harry L. Bowlby presents recommendations of, to Committee on Rights, etc. on Sunday, III 80-82, presents views of, to Committee on the Legislative on gambling and gambling on Sunday, III 626-630; proposals of, to Committee on Rights, etc. on Sunday, III 367-369
- LOYAL ORDER OF MOOSE, Arthur W. Cranston presents views of, to Committee on the Legislative on gambling, III 755
- LUTE, REV. EDWARD, appearance before Committee on the Legislative; presents views of Hudson Methodist Parish on gambling, III 617-620
- LYONS, MISS MAY M., appearance before Committee on Rights, etc.; presents views (with Miss Mary Philbrook) of Legal Status of Women Committee of N. J. State Bar Association on legal status and rights of women, III 38-39

M

- MAC NEIL, DOUGLAS H., letter to Committee on Rights, etc., on reducing voting age to 18 and relationship to juvenile delinquency, III 370-372
- MADDEN, JUDGE THOMAS, appearance before Committee on the Judiciary; discusses views of Camden County Bar Association on appellate court, Court of Chancery, specialization in the judiciary, federal court practice, retirement and tenure of judges, IV 475-484
- MAGISTRATE'S COURTS, Edward Gaulkin on, IV 355-373
- MAHAN, MISS GAETANA, appearance before Committee on Rights, etc.; presents recommendations of Communist Party of N. J. on equal rights of women, III 77-78
- MAIDA, ROBERT H., appearance before Committee on the Judiciary; discusses unified court, jurisdiction of court, review of writs, assignment and appointment of judges, IV 520-521
- "MALE," suggested to Committee on Rights, etc., word be eliminated in Suffrage section, III 11; Mrs. W. B. Heinz on eliminating from Constitution, III 17-19; N. J. Committee for Constitutional Revision on omission as voting qualification, III 376; N. J. State Federation of Labor on, in Suffrage section, III 423-425
- MALLON, WILLIAM L., appearance before Committee on Taxation and Finance; presents views of N. J. Automobile Trade Association on dedication of funds, V 694-698
- MANDATORY LEGISLATION, John Bebout on, III 565-580; Robert C. Hendrickson on, III 592-613; Committee on the Legislative votes on provision concerning, III 659; Fred W. Goodwin on, III 694-698; proposals of N. J. Committee for Constitutional Revision on, III 866-871, recommendations of, on, III 872-873; recommendations of N. J. Industrial Union Council, C.I.O. on, III 888; memorandum of N. J. Taxpayers Association on, III 891-892

- MARANTZ, SAMUEL J., memorandum to Committee on the Judiciary on jury verdicts, IV 743-746
- MARKLEY, EDWARD A., appearance before Committee on Rights, etc.; presents recommendations of N. J. Civil Service Association, Inc. on provision for merit as basis of civil service, and the contractual character of pensions, III 200-201; appearance before Committee on Executive, etc.; presents views of N. J. Civil Service Association on civil service, V 390-392
- MARSH, THEODORE McC., letter to Committee on the Judiciary, on unified court and Court of Chancery, IV 714-715
- MARTIN, D. H., appearance before Committee on Executive, etc.; presents views of National Association for the Advancement of Colored People on discrimination in the militia, V 220-224
- MARTIN, FRED W., appearance before Committee on Rights, etc.; presents views of National Association for the Advancement of Colored People on civil rights and discrimination, III 70-73
- MARTIN, J. H. THAYER, appearance before Committee on Taxation and Finance; presents views on taxation, assessment of property, taxation of railroads, exemptions, tax exemptions for veterans, dedication of funds, and single fiscal year, V 610-619
- MATTHEWS, JOHN A., appearance before Committee on Taxation and Finance; presents views of Catholic Archdiocese of Newark on tax exemption of property of charitable, educational and religious institutions and of cemetery associations, V 651-655
- McCARTER, GEORGE W. C., appearance before Committee on the Judiciary on behalf of N. J. State Bar Association; recommends unified court, rules commission, and tenure, IV 38-48; presents views of Committee on Law Reform on name of court, uniform court, Prerogative Court, appeals, jury trials, prerogative writs, retirement, removal and assignment of judges, Administrative Director of Courts, and appointment of advisory masters, IV 490-495; memorandum on 1944 proposals of N. J. State Bar Association on Judiciary Article; discusses name of court, county courts, courts of appeals, impeachment court, Supreme Court, unified court, assignment of judges, rule-making power of courts, Administrative Director of Courts, appointment, removal and retirement of judges, IV 584-593
- McCORMICK, RICHARD P., appearance before Committee on Rights, etc.; discusses paupers, idiots, insane persons and criminals in connection with election and suffrage, III 20-22
- McGRATH, CHARLES E., JR., letter to Committee on the Judiciary, on prerogative writs, IV 732-733
- McDOWELL, LESTER G., appearance before Committee on the Judiciary, IV 304
- McGRATH, EDWARD A., member, Committee on the Judiciary, IV iii
- McKINLEY, WILLIAM G., appearance before Committee on Rights, etc.; presents recommendations of American Legion, Department of N. J., on civil service rights of veterans, III 56-59; appearance before Committee on Executive, etc.; presents views of American Legion, Department of N. J., on militia, V 347-357
- McMURRAY, WAYNE D., member, Committee on the Judiciary, IV iii
- McSPIRIT, CHARLES H., appearance before Committee on Rights, etc., III 137-138
- "MEN," recommended to Committee on Rights, etc., that reference to, include "women," III 6; suggested to Committee on Rights, etc., that it be changed to "jurors," III 8; Committee on Rights, etc., votes to change "men" to "persons" in Bill of Rights, III 165; Mrs. Frank Fobert on replacement of, by "persons," III 223-227; Robert C. Hendrickson on, III 335-341
- MENTAL INCOMPETENCY, JURY TRIAL, suggested to Committee on Rights, etc., that Legislature may authorize trial for, without jury, III 8; Committee on Rights, etc., votes provision for trial without, III 185
(see *Jury, Trial, Mental Incompetency*)

MENTALLY INCOMPETENT PERSON (see *Suffrage*)

MERCER COUNTY BAR ASSOCIATION, H. Collins Minton, Jr. presents resolution of, on Court of Chancery and equity, IV 389-391; resolution to Committee on the Judiciary, on Court of Chancery, IV 682

MERKLEIN, CHARLES, appearance before Committee on the Legislative on gambling, bingo, pari-mutuel betting and law enforcement, III 530-537

MERRILL, MRS. J. C., appearance before Committee on the Legislative; presents views of N. J. League of Women Voters on legislative sessions, four-year terms for Senators, two-year terms for Assemblymen, legislative procedure, elections in odd-numbered years, election by Assembly districts, proportional representation, salaries of legislators, dual office holding, election of State Auditor and other executive officers, legislative investigations, III 580-587, on separation of powers, sessions, special sessions, legislative procedure, home rule, salaries of legislators, and power of investigation of the Legislature, III 688-691; appearance before Committee on Executive, etc.; presents views of N. J. League of Women Voters on investigations, and waiver of immunity, V 167-170

METHODIST SUMMER ASSEMBLY, Rev. Frank Bateman Stanger presents views of, to Committee on Rights, etc., on separation of church and State, civil rights, and gambling, III 158

MILITARY ORDER OF THE PURPLE HEART, GENERAL MERCER CHAPTER NO. 33, resolution to Committee on the Legislative on gambling, III 490-491

MILITARY, SUBORDINATE TO CIVIL POWER, Committee on Rights, etc., votes on provision for, III 173

MILITIA, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Committee on Executive, etc., defers action on provision for, V 60, discusses provision for, V 265-266, votes on amendment to provision for, V 287-288, votes on provision for, V 406; A. Harry Moore on, V 62-73; James I. Bowers on, V 74-87; Mrs. Edwin Behout on, V 170-175; letter of Stephen H. Barlow on, V 190-191; Clifford R. Powell and Stephen H. Barlow on, V 193-203; Chris Edell on, V 345-347; William G. McKinley on, V 347-357; Gabriel Kurtzenbaum on, V 357-358; Ben Thomas on, V 359-364; Charles Becker on, V 399-401

MILITIA, DISCRIMINATION IN, D. H. Martin on, V 220-224; Committee on Executive, etc., discusses provision for and defers action on, V 224-232; Rev. E. S. Hardge on, V 224-232

MILLBURN, TOWNSHIP OF, letter and resolution of, to Committee on the Legislative on referendum and home rule, III 857-859

MILLER, MRS. GENE W., member and secretary, Committee on the Judiciary, IV iii

MILLER, GEORGE J., statement on local government, III 820-843

MILLER, SPENCER, JR., introduces Dr. Thomas Reed to Committee on the Legislative on behalf of N. J. Committee for Constitutional Revision, III 712-713; member, Committee on Executive, etc., V iii; presents Dr. Thomas H. Reed and Dr. George Graham to Committee on Executive, etc., on behalf of N. J. Committee on Constitutional Revision, V 365-389

MILLER, WILLIAM, named technician and draftsman for Committee on Executive, etc., V 1

MILLIGAN, GEORGE, appearance before Committee on Rights, etc.; presents recommendation of United Spanish War Veterans, Department of N. J. on civil service preference for veterans, III 153

MILTON, JOHN, member of Committee on Taxation and Finance, V iii

MINTON, H. COLLINS, JR., appearance before Committee on the Judiciary; presents resolution of Mercer County Bar Association on Court of Chancery and equity, IV 389-391

MISSOURI PLAN, SELECTION OF JUDGES, Alexander F. Ormsby on, IV 328-339; James Kerney, Jr. on, IV 340-349; Governor Alfred E. Driscoll on, IV 427-445

- MONMOUTH COUNTY BAR ASSOCIATION, Ward Kremer presents views of, to Committee on the Judiciary on Court of Chancery, specialization in judiciary, equity, court of appeals, and county courts, IV 446-454, on Court of Chancery, prerogative writs, and retirement of judges, IV 498-500
- MONTCLAIR PLANNING BOARD, Ernest G. Fifield presents views of, to Committee on the Legislative on zoning, county zoning, development and redevelopment of cities, and street maps, III 537-549; Scott Bagley presents views of, to Committee on the Legislative on zoning, III 541-543; proposals to Committee on the Legislative on zoning, development and redevelopment, official street maps, and planning, III 860-863; letter to Committee on the Legislative, on planning, III 864-865
- MONTGOMERY, J. SEYMOUR, JR., letter to Committee on the Judiciary, on unified court, IV 713
- MONTGOMERY, JOHN L., member of Committee on Submission and Address, V iv
- MOORE, FORMER GOVERNOR A. HARRY, appearance before Committee on Executive, etc.; presents views on four-year term and succession for Governor, appointment and removal of department heads by Governor, action by Senate on nominations, veto, election by Assembly districts, exemption from taxation, county offices to be constitutional, home rule, Lieutenant-Governor, and militia, V 62-73
- MORONEY, J. FRANCIS, member and secretary, Committee on Submission and Address, V iv
- MORRIS COUNTY BAR ASSOCIATION, recommendations to Committee on the Judiciary on court of appeals, unified court and county courts, IV 706
- MORRISSEY, JOHN L., member, Committee on the Legislative, III iii
- MOSKOVITZ, JESSE, appearance before Committee on Rights, etc.; presents views of American Jewish Congress on due process of law, discrimination in civil rights, collective bargaining, amendment, and periodic revision of Constitution, III 264-271
- MOTOR CARRIERS SERVICE BUREAU, William H. Connell presents views of, to Committee on the Legislative on special laws, III 492-494, to Committee on Taxation and Finance on tax exemption, V 554-556
- MOTOR VEHICLE AGENTS' ASSOCIATION OF NEW JERSEY, George Condit presents views of, to Committee on the Legislative on Governor's appointive power, III 691-694
- MUNICIPAL GOVERNMENT, John F. Evans on, III 508-517
- MUNICIPALITIES (see *Development; Redevelopment; Mandatory Legislation*)
- MUNICIPALITIES, FINANCES, Homer C. Zink on, V 584-596; Walter Darby on, V 727-728
- MURPHY, FRANCIS D., member, Committee on Submission and Address, V iv
- MURRAY, FRANK J., member and vice-chairman, Committee on Taxation and Finance, V iii-iv

N

- NARCOTICS, statement of New Jersey Conference of the Methodist Church on, III 874-877
- NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE OF NEW JERSEY, Fred W. Martin presents views of, to Committee on Rights, etc., on civil rights and discrimination, III 70-73; Rev. E. S. Hardge presents views of, to Committee on Rights, etc., on discrimination, III 73-74, to Committee on Executive, etc., on discrimination in the militia, V 224-232; proposals to Committee on Rights, etc., on discrimination, restrictions on use of land, and property qualifications for jury service, III 373; D. H. Martin presents views of, to Committee on the Executive, etc., on discrimination in the militia, V 220-224
- NATIONAL CONFERENCE OF CHRISTIANS AND JEWS, NEW JERSEY REGION, memorandum to Committee on Rights, etc., on discrimination in civil rights, III 374

- NATIONAL COUNCIL OF JEWISH WOMEN, NEW JERSEY CONFERENCE, Mrs. Julius Flink presents views of, before Committee on the Judiciary on unified court, administration of courts, removal of judges and county courts, IV 504-505
- NATURAL RESOURCES OF STATE, Mrs. Harold W. Corlett on, III 14-15; N. J. League of Women Voters on conservation, development and use of, III 364
(see also, *Conservation*)
- NEELD, AARON K., appearance before Committee on Taxation and Finance; presents views on assessment of property, taxation, exemption, tax exemption for veterans, classification of property for tax purposes, and tax clause, V 541-542; memorandum to Committee on Taxation and Finance, on taxation, assessment and classification of property, tax clause, and taxation of railroads, V 853-855
- NEWARK ANNUAL METHODIST CONFERENCE, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling, bingo, pari-mutuel betting, and horse-racing, III 517-528
- NEWARK, CITY OF, Thomas E. Hunt presents views of, to Committee on Taxation and Finance on taxation, and assessment of property, V 750-751
- NEWARK, CITY OF, BOARD OF EDUCATION, Jacob Fox presents views of, to Committee on Taxation and Finance on state aid for education, taxation, railroad taxation, and tax clause, V 751-758
- NEWARK EVENING NEWS, account of proceedings before Committee on Taxation and Finance of June 24, 1947, V 832-834
- NEWARK MINISTERIAL ASSOCIATION, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732
- NEW BRUNSWICK, CITY OF, Paul Ewing presents views of, to Committee on Taxation and Finance on tax exemption, V 545-554
- NEW BRUNSWICK COUNCIL OF CHURCHES, Dr. Paul A. Friedrich presents views of, to Committee on the Legislative on gambling, pari-mutuel betting, and bingo, III 560-564; Rev. Harland T. Gant presents views of, to Committee on the Legislative on gambling, III 625-626
- NEW JERSEY AGRICULTURAL SOCIETY, George Tierney presents views of, to Committee on Executive, etc., on State Board of Agriculture, Department of Agriculture and Secretary of Agriculture, V 142-150; brief of, to Committee on Executive, etc., on method of selection of members of State Board of Agriculture, V 483-487; statement on selection of members of State Board of Agriculture, V 488-490
- NEW JERSEY AMERICAN YOUTH FOR DEMOCRACY, Nat Brooks presents views of, to Committee on Rights, etc., on discrimination in civil rights, and voting at age 18, III 256-258; proposals of, to Committee on Rights, etc., on discrimination, collective bargaining, and voting at age 18, III 375
- NEW JERSEY ASSOCIATION OF CHOSEN FREEHOLDERS, resolution to Committee on the Judiciary, on county courts, IV 739; resolution to Committee on Executive, etc., on inclusion of boards of chosen freeholders in Constitution, V 492
- NEW JERSEY ASSOCIATION OF COUNTY TAX BOARD COMMISSIONERS AND SECRETARIES, proposal to Committee on Taxation and Finance, on taxation, assessment of property, tax clause, true value, classification of property, and exemptions, V 856-858
- NEW JERSEY ASSOCIATION OF REAL ESTATE BOARDS, Ormonde A. Kieb presents views of, to Committee on Taxation and Finance on taxation, assessment of property, true value, classification of property, and tax exemption, V 786-788; statement to Committee on Taxation and Finance, on taxation, assessment of property, true value, classification of property, and tax exemption, V 859-861; analysis ("A 20th Century State With A 19th Century Tax System") for Committee on Taxation and Finance on taxation, assessment of property, true value, and classification of property, V 898-908

- NEW JERSEY AUTOMOBILE TRADE ASSOCIATION, William L. Mallon presents views of, to Committee on Taxation and Finance on dedication of funds, V 694-698
- NEW JERSEY CIVIL SERVICE ASSOCIATION, INC., Edward A. Markley presents recommendations of, to Committee on Rights, etc., on provision for merit as basis of civil service, and contractual character of pensions, III 200-201, presents views of, to Committee on Executive, etc., on civil service, V 390-392; memorandum to Committee on Executive, etc., on civil service and pensions as contractual obligations, V 494-497
- NEW JERSEY COMMITTEE FOR CONSTITUTIONAL REVISION, James Kerney, Jr. presents views of, to Committee on Rights, etc., on discrimination, religious test, collective bargaining, amendments and periodic revision of Constitution, III 96-101, to Committee on the Judiciary on unified court and appointment of judges, IV 489-490, to Committee on Executive, etc., on veto, limitation of departments to 20, and gubernatorial succession, V 339-341, to Committee on Taxation and Finance, on single fund, single budget, and dedication of funds, V 646-650; Carl Holderman presents views of, to Committee on Rights, etc., on collective bargaining, rights of labor, discrimination, amendment, and periodic revision of Constitution, III 212-219; proposals of, to Committee on Rights, etc., on omission of "male" and "pauper" as qualifications for voting, amendment and periodic revision of Constitution, III 376; John Bebout presents views of, to Committee on the Legislative, on home rule, mandatory legislation, "legislative lighting," investigatory power of the Legislature, election by Assembly districts, two-year terms for Assemblymen, four-year terms for Senators, Legislative Council, salaries of legislators, legislative sessions, and legislative procedure, III 565-580, to Committee on Executive, etc., on gubernatorial succession, reorganization and administration of departments, execution of laws and investigations by Governor, referendum, appointment of department heads, election of State Auditor by Legislature, county officials as constitutional officers, separation of powers, powers of Governor, veto, Judicial Council and cabinet, V 112-127; Robert C. Hendrickson presents views of, to Committee on the Legislative, on limitation on legislative sessions, salaries of legislators, biennial sessions, four-year terms for Senators, two-year terms for Assemblymen, elections in odd-numbered years, appointment of legislators to state office, appointment of executive officers by the Legislature, lobbying, Legislative Council, zoning, condemnation, mandatory legislation, legislative procedure, and gambling, III 592-613; Dr. Thomas Reed appears on behalf of, before Committee on the Legislative, III 712-726; proposals on local government, home rule, mandatory laws, and limited referendum, III 866-871; recommendations to Committee on the Legislative, on election of members of Legislature, legislative procedure, Legislative Council, mandatory laws, and home rule, III 872-873; Louis B. LeDuc discusses proposals made by, with Committee on the Judiciary, IV 17-26, presents views of, to Committee on the Judiciary on unified court, appointment of judges, county courts, and name of court, IV 527-530, on name of court, retirement age of judges, Court of Chancery, and equity, IV 531-533; explanation of draft of proposed Judicial Article; details furnished in connection with proposals for unified court, flexibility of courts, specialization of judiciary, Judicial Council, selection, term of office, appointment, removal and retirement of judges, and administration of courts, IV 575-583; letter to Committee on the Judiciary on unified court, court of appeals, and tenure of judges, IV 697; Charles R. Erdman, Jr. presents views of, to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, veto, power of Governor to investigate and remove department heads, consolidation and reorganization of departments, appointment of department heads, budget, state finance, Acting Governor, Lieutenant-Governor, powers of the Governor, Assembly districts, administration of departments, and action by Senate on nominations, V 88-104; Bennett M. Rich presents views of, to Committee on Executive, etc., on Governor: term, succession, election in odd-numbered years, date of taking office, vacancy in office; Lieutenant-Governor, Administrative Manager of State, veto, consolidation and reorganization of departments and civil service, V 104-112; Spencer Miller, Jr., on behalf of, presents

Dr. Thomas H. Reed and Dr. George Graham to Committee on Executive, etc., V 365-389; recommendations of, to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, election of Governor in odd-numbered years, veto, powers of Governor, limitation of departments to 20, appointment of department heads, reorganization of departments, budget, action on nominations by Senate, vacancy in office of Governor, Acting Governor, civil service, and omission of county officers in Constitution, V 498-499; explanation and draft of proposals to Committee on Executive, etc., on limitation of departments to 20, appointment of department heads, reorganization of departments, publication of administrative rules and regulations, powers of Governor, veto, vacancy in office of Governor, Acting Governor, and investigations by Governor, V 500-514; John F. O'Brien presents views of, to Committee on Taxation and Finance on assessment of property, and exemption from taxation, V 543-544, on taxation, tax clause, assessment of property, and assessment of railroads, V 737-741, on taxation, true value, assessment and classification of property, V 781-786; Leo Pfeiffer presents views of, to Committee on Taxation and Finance on tax exemptions for religious educational institutions, V 809-813; recommendations of, to Committee on Taxation and Finance on budget, appropriations, single State fund, single fiscal year, taxation, exemption, assessment of property, true value and classification of property, V 862

NEW JERSEY COMMITTEE FOR CONSTITUTIONAL REVISION, COMMITTEE ON RESEARCH AND DRAFTING, draft proposals and statement to Committee on Rights, etc., on self-executing clause, periodic revision of Constitution, amendment, right of suffrage, absentee voting, collective bargaining, and right to nominate candidates, III 377-383

NEW JERSEY CONFERENCE OF AAA AUTOMOBILE CLUBS, Mrs. Kathryn D. Sullivan presents views of, to Committee on Taxation and Finance on dedication of funds, V 688-691

NEW JERSEY CONFERENCE OF THE METHODIST CHURCH, A. C. Brady submits brief on behalf of, to Committee on Rights, etc., on Sunday observance, III 157-158; Rev. Harland T. Gant presents views of, to Committee on the Legislative on gambling, III 625-626; statement to Committee on the Legislative on narcotics, sex, Sunday, gambling, liquor, and divorce, III 874-877

NEW JERSEY CONFERENCE OF THE METHODIST CHURCH, BRIDGE-TON DISTRICT, letter to Committee on the Legislative, on gambling, III 878

NEW JERSEY COUNCIL OF CHRISTIAN CHURCHES, Weidner Titzck presents views of, to Committee on Taxation and Finance on transportation of children to schools, V 789-799

NEW JERSEY COUNCIL OF CHURCHES, recommendations to Committee on Rights, etc., on amendment, collective bargaining, and discrimination, III 148-149; proposals to Committee on Rights, etc., on collective bargaining, discrimination in civil rights, and gambling, III 384-385; Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732; Rev. Alex Shore presents views of, to Committee on the Legislative on gambling, III 756; resolution of Executive Committee to Committee on the Legislative on gambling, III 879; memorandum to Committee on Taxation and Finance, on transportation of school children, V 863-865

NEW JERSEY COUNCIL OF CHURCH WOMEN, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732

NEW JERSEY COUNCIL OF RELIGIOUS EDUCATION, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732

NEW JERSEY COUNCIL, STATE, COUNTY AND MUNICIPAL WORKERS, brief of, to Committee on Rights, etc., on collective bargaining for public employees, III 386-392; Gibson Le Roy presents views of, to Committee on Executive, etc., on labor rights of public employees, and civil service, V 157-167; proposal to Committee on Executive, etc., on controversies in connection with public employment, V 515

- NEW JERSEY DIVISION AGAINST DISCRIMINATION, Joseph L. Bustard presents recommendation of Council of, on discrimination, III 43-47; Harold A. Lett presents views of, to Committee on Rights, etc., on discrimination in civil rights, III 248-253
- NEW JERSEY EDUCATION ASSOCIATION, Miss Bertha Lawrence presents views of, to Committee on Rights, etc., on state pensions as contractual obligations, civil service in Constitution, discrimination, initiative, and referendum, III 103-106, to Committee on Taxation and Finance, on schools, education, State School Fund, and assessment of property, V 562-563; statement of, to Committee on Rights, etc., on contractual character of state pension system, contractual relationship of public employees, discrimination, initiative, and referendum, III 393-394
- NEW JERSEY FARM BUREAU, Herbert Voorhees presents views of, to Committee on Rights, etc., on amendment, III 262-264; statement to Committee on Rights, etc., on principles of a constitution, III 395-400; a memorandum to Committee on Rights, etc., on amendment and periodic revision of Constitution, III 401-403; George Tierney presents views of, to Committee on Executive, etc., on State Board of Agriculture, Department of Agriculture, and Secretary of Agriculture, V 142-150; statement on selection of members of State Board of Agriculture, V 488-490; memorandum on independence of Department of Agriculture, V 491
- NEW JERSEY FEDERATION OF AMERICAN PATRIOTIC SOCIETIES, STATE OF, letter to Committee on Taxation and Finance on transportation of school children, V 866-868
- NEW JERSEY FEDERATION OF OFFICIAL PLANNING BOARDS, letter and proposals of, to Committee on the Legislative, on zoning, planning, conservation, excess condemnation, official street map, public housing, slum clearance, and redevelopment authorities, III 880-882
- NEW JERSEY FEDERATION OF THEATRES, George Gold presents views of, to Committee on the Legislative on gambling and bingo, III 744-745
- NEW JERSEY FEDERATION OF WOMEN'S CLUBS, Mrs. Bucknum presents views of, to Committee on Rights, etc., on what a constitution should contain, III 35; Mrs. Robert W. Cornealson presents views of, to Committee on Rights, etc., on discrimination, equal rights of women, and amendment, III 101-103; letter to Committee on Rights, etc., on equal rights of women, amendment, and periodic revision of Constitution, III 404-405
- NEW JERSEY HIGHWAY USERS' CONFERENCE, William J. Gaffney presents views of, to Committee on Taxation and Finance on dedication of highway funds, V 576-578, on dedication of funds, V 702-720; brief of, to Committee on Taxation and Finance on dedication of highway funds, V 869-891
- NEW JERSEY INDEPENDENT CITIZENS' LEAGUE, James Imbrie presents views of, to Committee on Rights, etc., on amendments, civil rights, and collective bargaining, III 227-230
- NEW JERSEY INDEPENDENT CITIZENS' LEAGUE, NUTLEY CHAPTER, letter to Committee on Rights, etc., on rights of labor, and discrimination, III 406-407
- NEW JERSEY LAW JOURNAL, William J. Brennan, Jr. presents editorials from, on unified courts, appellate court, and appellate division, IV 201-204; Israel B. Greene presents editorial views from, on unified court, Court of Chancery, and equity, IV 223-231; proposals of editors on need for revision of judicial system, an unified court, appellate division, appeals, probate law, Court of Chancery, common law courts, appointment, tenure and retirement of judges, IV 655-681
- NEW JERSEY LEAGUE OF WOMEN VOTERS, Mrs. Harold W. Corlett presents views of, on conservation, development and utilization of natural resources of State, III 14-15; Mrs. W. B. Heinz presents recommendations of, to Committee on Rights, etc., on elections of Governor and legislators in odd-numbered years, elimination of word "male" in Constitution, reducing voting age to 18, elimination of county residence requirement for voting, proportional representation, and paupers, criminals and absentee voting in connection with elec-

tions, III 17-19, on equal rights, III 76-77, on selection and tenure of judges, IV 58-59, commends Committee on Executive, etc., on behalf of, for draft of Article, V 344-345; Mrs. Arthur C. Gillette presents views of, on amendment and periodic revision of Constitution, to Committee on Rights, etc., III 27-28; Mrs. Frank Fobert presents views of, on collective bargaining, III 40-42, to Committee on Rights, etc., on use of "persons" instead of "men" in Constitution, anti-discrimination clause, state use of private property, collective bargaining, elections, absentee voting, amendments, and periodic revision of Constitution, III 223-227; Mrs. Lenora B. Willette presents recommendation of, on discrimination and equal civil rights, III 42-43; recommendations to Committee on Rights, etc., on Bill of Rights, justices of the peace, private property for public use, rights of citizens, collective bargaining, discrimination, elections, voting at age 18, suffrage, residence requirement for voting, pauper as disqualification for voting, loss of suffrage by person convicted of crime, absentee voting, amendment and periodic revision of Constitution, public education, housing, public health, relief, and conservation, III 356-361; on amendment and periodic revision of Constitution, III 362-363; statement to Committee on Rights, etc., on conservation, development, and utilization of natural resources, III 364; letter to Committee on Rights, etc., on veterans' preference in civil service, III 365-366; Mrs. J. C. Merrill presents views of, to Committee on the Legislative on legislative sessions, four-year terms for Senators, two-year terms for Assemblymen, legislative procedure, elections in odd-numbered years, election by Assembly districts, proportional representation, salaries of legislators, dual office holding, election of State Auditor and other executive officers, and legislative investigations, III 580-587, on separation of powers sessions, special sessions, legislative procedure, home rule, salaries of legislators, and power of investigation of the Legislature, III 688-691, to Committee on Executive, etc., on investigations, and waiver of immunity, V 167-170; recommendations to Committee on the Legislative on sessions, special sessions, composition of the Legislature, salaries of legislators, dual office holding by legislators, legislative procedure, election of State Auditor by Legislature, public education, public housing, public health, public relief, conservation, and local government, III 849-854; Mrs. Stuart Henderson presents recommendations on unified court, IV 55-58, presents views of, to Committee on the Judiciary on unified court, county courts, and appointment of judges, IV 495-496; recommendations on selection and tenure of judges presented by Mrs. H. K. Halligan, IV 59-60; recommendations on administration of courts presented by Mrs. B. G. Griffith, IV 60-61; recommendations submitted to Committee on the Judiciary on unified court, Supreme Court, rule-making power of courts, rules subject to law, general court, appellate division, appeals, Commission on Judicial Appointments, appointment, qualifications and tenure of judges, Administrative Director of Courts, and administration of courts, IV 595-598; statement on appointment of judges, through a Commission on Judicial Appointment, IV 698; Mrs. Charles Kellers presents views of, to Committee on Executive, etc., on Governor: four-year term, election in odd-numbered years, succession, vacancy in office; Lieutenant-Governor, cabinet, appointment of department heads, action on nominations by Senate, veto, investigation by Governor, pardon, reorganization, consolidation and administration of departments, V 132-136; Mrs. Edwin Bebout presents views of, to Committee on Executive, etc., on militia, oath of office by appointive State officers, compensation or fees received by appointive state officers to be part of general treasury, officers deleted from Constitution, appointment of officers, Auditor to be named in Constitution, and departments to be limited to 20, V 170-175, on civil service, V 207-208; recommendations of, to Committee on Executive, etc., on Governor: four-year term, election in odd-numbered years, succession, vacancy in office; Acting Governor, Lieutenant-Governor, appointment and removal of department heads, action on nominations by Senate, power of Governor, veto, investigations by Governor, pardon, administrative manager, limitation of departments to 20, reorganization and administration of departments, oath of office, civil service, fees received by officials to be paid into treasury, officials deleted from Constitution, and waiver of immunity, V 475-480; statement to Committee on Executive, etc., on civil service, V 481-482; Mrs. Irene Baldwin presents views of, to Com-

- mittee on Taxation and Finance on single fund, dedication of funds, single fiscal year, election of State Auditor by Legislature, appropriations, taxation, tax clause and education, V 747-749, on taxation, assessment of property, tax clause, true value, exemption, and transportation of school children, V 808-809; recommendations and statement to Committee on Taxation and Finance on revenues, single fund, appropriations, single fiscal year, budget, assessment and classification of property for taxation, V 850-852
- NEW JERSEY LIBRARY ASSOCIATION, Mrs. Ada J. English presents views of, to Committee on Taxation and Finance on free public libraries, V 685-688
- NEW JERSEY MAGISTRATES ASSOCIATION, Alfred T. Glenn presents views of, on justices of the peace, IV 503-504; letter on justices of the peace to Committee on the Judiciary, IV 699
- NEW JERSEY MANUFACTURERS ASSOCIATION, letters to Committee on Rights, etc., on collective bargaining, III 408-409, 410-411; letter to Committee on Executive, etc., on veto, four-year term for Governor, gubernatorial succession, election of Governor in odd-numbered years, pardons, reprieves, and paroles, V 516-517
- NEW JERSEY MOTOR TRUCK ASSOCIATION, Daniel J. Crecca presents views of, to Committee on Taxation and Finance on dedication of funds, V 698-700
- NEW JERSEY MOTOR VEHICLE AGENTS' ASSOCIATION, George Condit presents views of, to Committee on Executive, etc., on appointment of department heads, V 392-395; brief to Committee on Executive, etc., on appointment of department heads, V 521-524
- NEW JERSEY PETROLEUM INDUSTRIES COMMITTEE, William J. Gaffney presents views of, to Committee on Taxation and Finance on dedication of highway funds, V 576-578
- NEW JERSEY ROADSIDE COUNCIL, Albert S. Bard presents views of, to Committee on the Legislative on planning, conservation, and billboards, III 588-592
- NEW JERSEY SOCIETY OF PROFESSIONAL ENGINEERS, Charles J. Dodge presents views of, to Committee on Taxation and Finance on diversion of highway funds, V 578-583
- NEW JERSEY STATE AVIATION COMMISSION, Robert L. Copsey presents views of, to Committee on the Legislative on zoning for airports, III 635-636; John W. Griggs presents views of, to Committee on the Legislative on zoning for airports and recommends county zoning, III 636-638
- NEW JERSEY STATE BAR ASSOCIATION, George W. C. McCarter presents proposals of, to Committee on the Judiciary, IV 38-48, memorandum on 1944 proposals of, to Committee on the Judiciary, IV 584-593; recommendations on prerogative writs presented by Herbert J. Hannoch, IV 48-55; report to Committee on the Judiciary, on results of poll of members on Court of Chancery and unified court, IV 703-704
- NEW JERSEY STATE BAR ASSOCIATION, COMMITTEE ON LAW ENFORCEMENT, George W. C. McCarter presents views of, to Committee on the Judiciary on name of court, unified court, Prerogative Court, appeals, jury trial, prerogative writs, retirement, removal and assignment of judges, Administrative Director of Courts, and appointment of advisory masters, IV 490-495
- NEW JERSEY STATE BAR ASSOCIATION, LAW REFORM COMMITTEE, Morgan R. Seiffert discusses position of, before Committee on the Judiciary on unified court, jurisdiction of Supreme Court, appeals, retirement of judges, Administrative Director of Courts, and Chancery Court, IV 514-517
- NEW JERSEY STATE BAR ASSOCIATION, LEGAL STATUS OF WOMEN COMMITTEE, recommendation of, on legal status and rights of women presented to Committee on Rights, etc., III 38-39, on equal rights of women, III 412-413
- NEW JERSEY STATE BAR ASSOCIATION, PREROGATIVE WRIT COMMITTEE, Herbert J. Hannoch presents proposal on prerogative writs, IV 594
- NEW JERSEY STATE CHAMBER OF COMMERCE, views of, to Committee on

the Legislative on terms of office and salaries of legislators, and sessions of the Legislature, III 883; letter to Committee on the Judiciary, on unified court, IV 740; recommendations to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, and veto, V 493; Alvin A. Burger presents views of, to Committee on Taxation and Finance on credit of State, debt, State School Fund, dedication of funds, taxation, tax exemption, tax exemption for veterans, single budget, and single fiscal year, V 543; recommendations to Committee on Taxation and Finance on taxation, assessment of property, true value, and exemptions, V 892

NEW JERSEY STATE COMMANDERS' CONFERENCE ON CONSTITUTIONAL REVISION, Alexander Ormsby presents recommendations of, to Committee on Rights, etc., on civil service preference for veterans, III 138-143, to Committee on Taxation and Finance on tax exemption for veterans, V 664-673

NEW JERSEY STATE ELKS ASSOCIATION, Charles Handler presents views of, to Committee on the Legislative on gambling and bingo, III 638-640, 732-738; John Winans presents views of, to Committee on the Legislative on gambling and bingo, III 748-751; resolution of, to Committee on the Legislative on gambling and bingo, III 884

NEW JERSEY STATE FARMERS UNION COUNCIL, letter to Committee on Rights, etc., on method of selecting members of State Board of Agriculture and the Secretary of Agriculture, and on civil rights, III 415

NEW JERSEY STATE FEDERATED EGG PRODUCERS COOPERATIVE ASSOCIATION, INC., telegram to Committee on Rights, etc., on method of selecting Secretary of Agriculture, co-operative movement, and creation of a Fair Employment Practices Committee, III 416-417

NEW JERSEY STATE FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, Mrs. Carpenter presents views of, to Committee on Rights, etc., on equal rights of women, III 82-84; proposal and resolution to Committee on Rights, etc., on equal rights for women, III 418-419, 420

NEW JERSEY STATE FEDERATION OF COLORED WOMEN'S CLUBS, resolution of, to Committee on Rights, etc., on discrimination in civil rights and in use of public property, III 421-422

NEW JERSEY STATE FEDERATION OF LABOR, Thomas Parsonnet presents views of, to Committee on Rights, etc., on discrimination in civil rights, collective bargaining, voting age at 18, amendment and periodic revision of Constitution, III 231-243, to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, appointment of department heads, cabinet, veto, election of judges, power of investigation by Governor, initiative and referendum, and Lieutenant-Governor, V 127-132; recommendations to Committee on Rights, etc., on discrimination, collective bargaining, public housing, equal rights for women, eliminating "male" and "pauper" in suffrage section, voting at age 18, amendment, initiative, referendum, and periodic revision of Constitution, III 423-425; recommendations to Committee on the Legislative, on terms and salaries of members of the Legislature, "legislative lightning," caucus system, state aid for education, free State University, and Assembly districts, III 885-887; statement to Committee on the Judiciary, on election of judges, Court of Chancery, unified court, and courts being subject to law, IV 700; recommendations to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, appointments by Governor, cabinet, and veto, V 518; recommendations to Committee on Taxation and Finance, on schools and free State University, V 893

NEW JERSEY STATE FEDERATION OF TEACHERS, letter to Committee on Rights, etc., on separation of church and State, III 426; proposal to Committee on Rights, etc., on contractual character of pensions and teaching positions, III 427

NEW JERSEY STATE FEDERATION OF WOMEN'S CLUBS, Mrs. Ralph Barnehenn presents views of, to Committee on Executive, etc., on Lieutenant-Governor, and cabinet, V 389-390

NEW JERSEY STATE FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, letter to Committee on Rights, etc., on contractual character of pensions, III

- 428; letter and proposal to Committee on Executive, etc., on same, V 519, 520
- NEW JERSEY STATE GRANGE**, statement to Committee on Rights, etc., on principles of a constitution, III 395-400; memorandum to Committee on Rights, etc., on amendment and periodic revision of Constitution, III 401-403; George Tierney presents views of, to Committee on Executive, etc., on State Board of Agriculture, Department of Agriculture, and Secretary of Agriculture, V 142-150; statement on selection of members of State Board of Agriculture, V 488-490; memorandum on independence of Department of Agriculture, V 491; Franklin C. Nixon presents views of, to Committee on Taxation and Finance on dedication of funds, V 691-694
- NEW JERSEY STATE HORTICULTURAL SOCIETY**, George Tierney presents views of, to Committee on Executive, etc., on State Board of Agriculture, Department of Agriculture, and Secretary of Agriculture, V 142-150; statement of, on selection of members of State Board of Agriculture, V 488-490
- NEW JERSEY STATE INDUSTRIAL UNION COUNCIL (C.I.O.)**, Irving Leuchter presents views of, on amendments, periodic revision of Constitution, and initiative, III 29-33, to Committee on the Legislative on two-year terms for Assemblymen, four-year terms for Senators, elections in odd-numbered years, salaries of legislators, investigatory power of the Legislature, legislative procedure, Legislative Council, election of independent parties, Assembly districts, III 614-617; Carl Holderman presents a recommendations of, to Committee on Rights, etc., on collective bargaining, discrimination, equal rights of women, amendment and periodic revision of Constitution, III 122-132, on collective bargaining, rights of labor, discrimination, amendment and periodic revision of Constitution, III 212-219, to Committee on Executive, etc., on four-year term for Governor, gubernatorial succession, veto, limitation of departments to 20, and cabinet, V 341-342; letter to Committee on Rights, etc., on periodic revision of Constitution, III 414; statement to Committee on Rights, etc., on amendment, periodic revision of Constitution, and initiative, III 429-433; recommendations to Committee on the Legislative on terms of Legislators, legislative procedure, Legislative Council, mandatory legislation, Assembly districts, and home rule, III 888; Sol D. Kapelsohn presents views of, on unified court, uniform system of police courts, Court of Chancery, term of office, tenure and removal of judges, IV 349-355, to Committee on Executive, etc., on Governor: four-year term, succession and power, V 150-157; recommendations of New Jersey Committee for Constitutional Revision approved by (see *New Jersey Committee for Constitutional Revision*), V 444; recommendations to Committee on Taxation and Finance on budget, appropriations, single state fund, single fiscal year, taxation, exemption, assessment of property, true value, and classification of property, V 894
- NEW JERSEY STATE LEAGUE OF MUNICIPALITIES**, James J. Smith presents views of, to Committee on the Legislative on home rule, III 759-762, to Committee on Taxation and Finance, on taxation, assessment of property, and exemption from taxation, V 560-562, on dedication of funds, V 720-722; letter to Committee on the Legislative, on home rule, III 889-890; Milton B. Conford presents views of, to Committee on Taxation and Finance on taxation, tax clause, assessment of property, taxation of railroads, and classification of property, V 759-768, on assessment of property, taxation, and taxation of railroads, V 563-576, on taxation and taxation of railroads, V 639-645
- NEW JERSEY STATE POTATO ASSOCIATION**, George Tierney presents views of, to Committee on Executive, etc., on State Board of Agriculture, Department of Agriculture and Secretary of Agriculture, V 142-150; statement on selection of members of State Board of Agriculture, V 488-490
- NEW JERSEY STATE POULTRY ASSOCIATION**, George Tierney presents views of, to Committee on Executive, etc., on State Board of Agriculture, Department of Agriculture and Secretary of Agriculture, V 142-150; statement on selection of members of State Board of Agriculture, V 488-490
- NEW JERSEY TAXPAYERS ASSOCIATION**, proposal to Committee on Rights, etc., on right of citizens to examine public records, III 434; Fred W. Goodwin presents views of, to Committee on Legislative on mandatory laws for local governments, III 694-698; memorandum to Committee on the Legislative on

mandatory legislation, III 891-892; recommendation to Committee on Executive, etc., on limitation of departments to 20, V 525; A. R. Everson presents views of, to Committee on Taxation and Finance on dedication of funds, tax limitation, tax exemption, and single budget, V 543, on taxation, assessment of property, dedication of funds, single fund, single fiscal year, and tax exemption, V 741-747; Harry W. Wolkstein presents views of, to Committee on Taxation and Finance on fiscal control by Governor, appropriations, single budget, dedication of funds, duties of fiscal officers, auditing, election of State Auditor by Legislature, state revenues, taxation, assessment of property, and intergovernmental relations, V 556-560; memorandum to Committee on Taxation and Finance on tax clause, taxation, assessment of property, classification of property, and exemption, V 895-897

NEW JERSEY TAXPAYERS COMMITTEE TO PRESERVE SEPARATION OF CHURCH AND STATE, Weidner Titzck presents statement of, to Committee on Rights, etc., on separation of church and State, III 149-153, views of, to Committee on Taxation and Finance on transportation of children to schools, V 789-799; William E. Dickey presents views of, to Committee on Taxation and Finance on transportation of children to school, V 799-802

NEW JERSEY WOMEN'S GOVERNMENT STUDY COUNCIL, statement to Committee on Rights, etc., on discrimination, freedom of speech, treason, use of private property for public purposes, collective bargaining, gambling, use of school buildings, III 435-437

NEWSPAPERS, CONVENTION USE OF, Committee on Submission and Address on, V 991

NEWTON CHAMBER OF COMMERCE, letter to Committee on the Judiciary, on unified court, IV 741

NIXON, FRANKLIN C., appearance before Committee on Taxation and Finance; presents views of New Jersey Grange on dedication of funds, V 691-694

NOLAN, JOHN N., letter to Committee on Taxation and Finance; presents views of Catholic Diocese of Paterson on tax exemptions for charitable, educational and religious institutions and cemetery associations, V 656

NOMINATIONS, Committee on the Legislative votes not to include provision for confirmation in open session on, III 654

NORTH HUDSON MINISTERIAL ASSOCIATION, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling, bingo, parimutuel betting, and horse-racing, III 517-528

NORTH HUDSON PROTESTANT CLERGY CLUB, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling and bingo, III 726-732

NULTON, HENRY G., appearance before Committee on the Judiciary; discusses views of County Clerks, Surrogates and Registers of Deeds and Mortgages Association on status of county clerks, IV 392-393

O

OATH OF OFFICE (see *Legislature, Members, Oaths; Officers, State, Oath*)

O'BRIEN, JOHN F., appearance before Committee on Taxation and Finance; presents views of N. J. Committee for Constitutional Revision on assessment of property and exemption from taxation, V 543-544, on taxation, tax clause, assessment of property and taxation of railroads, V 737-741, on taxation, true value, assessment, and classification of property, V 781-786

OCEAN COUNTY BAR ASSOCIATION, Howard Ewart presents views of Association and Ocean County Lawyers' Club to Committee on the Judiciary on court of appeals, justices of the peace, county courts, Court of Chancery, equity, and appointment of vice-chancellors, IV 454-460, discusses same, IV 521-525; resolution to Committee on the Judiciary, on Court of Chancery, IV 689

OCEAN COUNTY LAWYERS' CLUB (see *Ocean County Bar Association*)

OFFICERS, APPOINTMENT OF, Mrs. Edwin Bebout on, V 170-175

- OFFICERS, CONSTITUTIONAL, Mrs. Edwin Bebout on deletion, V 170-175; N. J. League of Women Voters on deletion, V 475-480
- OFFICERS, COUNTY (see *County Officers, Constitutional*)
- OFFICERS, EXECUTIVE, Mrs. J. C. Merrill on legislative appointment of, III 580-587; Robert C. Hendrickson on legislative appointment of, III 592-613
- OFFICERS, FISCAL, APPOINTMENT OF, Morgan F. Larson on, V 3-28
- OFFICERS, MUNICIPAL, letter of Sol Kantor on election and tenure, V 474
- OFFICERS, REMOVAL OF, Governor Alfred E. Driscoll on Governor's power, V 29-46
- OFFICERS, STATE, Mrs. Edwin Bebout on compensation or fees received to be part of general treasury, V 170-175; memorandum of Charles Edison on legislative election of, V 459-461
- OFFICERS, STATE, BOND, Committee on Executive, etc., votes on provision for, V 206, 288
- OFFICERS, STATE, COMPENSATION, Committee on Executive, etc., votes provision for schedule, V 302-307
- OFFICERS, STATE, FEES RECEIVED, Committee on Executive, etc., votes on provision for payment to State treasury, V 206, 288; N. J. League of Women Voters on payment into Treasury, V 475-480
- OFFICERS, STATE, IMPEACHMENT (see *Impeachment*)
- OFFICERS, STATE, OATH, Mrs. Edwin Bebout on, V 170-175; Committee on Executive, etc., votes provision for, V 206, 281-282; N. J. League of Women Voters on, V 475-480
- OFFICERS, STATE, TENURE, Committee on Executive, etc., votes provision for schedule, V 302-307
- OFFICERS, STATE, TERM, Committee on Executive, etc., votes on provision for, V 206, 288-289, votes provision for schedule, V 302-307
- OLIPHANT, CHANCELLOR A. DAYTON, appearance before Committee on the Judiciary; discusses Court of Chancery, equity, unified court, county courts, surrogates, appeals, appointment of vice-chancellors, specialization of courts, federal courts, administration of courts, rule-making power of courts, and rules of evidence, IV 396-415
- O'MARA, EDWARD J., member and chairman, Committee on the Legislative, III iii-iv
- ORGANIZED WOMEN LEGISLATORS OF NEW JERSEY, letter to Committee on Rights, etc., on equal rights for women, III 438
- ORMSBY, ALEXANDER, appearance before Committee on Rights, etc.; presents recommendations of N. J. State Commander's Conference on Constitutional Revision on civil service preference for veterans, III 138-143; appearance before Committee on the Judiciary; discusses appeals, tenure, compensation, pensions, retirement, election, removal and selection of judges, Court of Pardons, jury trials, unified courts, county courts, and Missouri Plan of selecting judges, IV 328-339; appearance before Committee on Taxation and Finance; prevents views of N. J. State Commander's Conference on Constitution Revision on tax exemption for veterans, V 664-673
- OTTO, CHARLES A., JR., appearance before Committee on the Judiciary; discusses views of County Clerks, Surrogates and Registers of Deeds and Mortgages Association of N. J. on status of surrogates, IV 391-392

P

- PARDONS, Governor Alfred E. Driscoll on, IV 427-445; Harold G. Hoffman on, V 46-58; Mrs. Charles Kellers on, V 132-136; Committee on Executive, etc., discusses provision for, V 138, votes to include provision for, V 209-220, votes on provision for, V 241; Sanford Bates on, V 177-190; N. J. League of Women Voters on, V 475-480; N. J. Manufacturers Association on, V 516-517
- PARDONS, BOARD OF, Richard B. Eckman on, IV 273-279; James Kerney, Jr.

- on, IV 340-349; Committee on Executive, etc., discusses provision for, V 138; Sanford Bates on, V 177-190
- PARDONS, COURT OF (see *Court of Pardons*)
- PARI-MUTUEL BETTING (see *Gambling*)
- PARK, LAWRENCE N., member and secretary, Committee on Rights, etc., III iii
- PAROLES, Governor Alfred E. Driscoll on, IV 427-445; Harold G. Hoffman on, V 46-58; Committee on Executive, etc., discusses provision for, V 138, votes to provide provision for, V 209-220, votes on provision for, V 241; Sanford Bates on, V 177-190; N. J. Manufacturers Association on, V 516-517
- PARSONNET, THOMAS L., appearance before Committee on Rights, etc., presents views of N. J. State Federation of Labor on discrimination in civil rights, collective bargaining, voting age at 18, amendments, and periodic revision of Constitution, III 231-243; appearance before Committee on Executive, etc., presents views of N. J. State Federation of Labor on four-year term for Governor, gubernatorial succession, appointment of department heads, cabinet, veto, election of judges, power of investigation by Governor, initiative and referendum, and Lieutenant-Governor, V 127-132
- PARTIES, INDEPENDENT (see *Elections*)
- PATERSON, CITY OF, John F. Evans presents views of, to Committee on the Legislative on home rule, III 706-711
- PAUL, WINSTON, appearance before Committee on Rights, etc.; presents views on amendment and periodic revision of Constitution, III 28-29, recommendations on same, III 175-178; member of Committee on Submission and Address, V iv; member and vice-chairman of Committee on Rules, Organization and Business Affairs, V iv
- "PAUPER," suggested to Committee on Rights, etc., word be eliminated in Suffrage section, III 11; Mrs. W. B. Heinz on right to vote, III 17-19; Richard P. McCormick on right to vote, III 20-22; N. J. Committee for Constitutional Revision on omission as voting qualification, III 376; N. J. State Federation of Labor on, in Suffrage section, III 423-425
- PENSIONS, Miss Bertha Lawrence on, as contractual obligations, III 103-106; Committee on Rights, etc., defeats proposal for provision for contractual basis, III 192; Edward A. Markley on contractual character, III 200-201; N. J. Education Association on contractual character, III 393-394; N. J. State Federation of Teachers on contractual character, III 427; N. J. State Firemen's Benevolent Association on contractual character, III 428, V 519, 520; memorandum of N. J. Civil Service Association, Inc. on, as contractual obligations, V 494-497
- PEOPLE, POLITICAL POWER OF (see *Political Power of People*)
- PERIODIC REVISION (see *Revision, Constitution, Periodic*)
- "PERSONS," Committee on Rights, etc., votes to change "men" to, in Bill of Rights, III 165; votes to replace "jurors" by, III 201; Mrs. Frank Fobert on use of instead of "men," III 223-227; Robert C. Hendrickson on, III 335-341
- PETERSON, REV. ARTHUR LAROY, appearance before Committee on the Legislative; presents views of Hudson Methodist Parish on gambling, III 621-623
- PETERSON, HENRY W., member, Committee on the Judiciary, IV iii
- PETERSON, MRS. PAULINE H., member, Committee on Rules, Organization and Business Affairs, V iv
- PFIEFFER, LEO, appearance before Committee on Rights, etc.; discusses views of Joint Committee on Constitutional Bill of Rights on discrimination in civil rights, and condemnation of property, III 253-255; appearance before Committee on Taxation and Finance; presents views of N. J. Committee on Constitutional Bill of Rights on tax exemptions for religious educational institutions, V 809-813
- PHILBROOK, MISS MARY, appearance before Committee on Rights, etc.; presents views (with Miss May M. Lyons) of Legal Status of Women Commit-

- tee of N. J. State Bar Association on legal status and rights of women, III 38-39
- PICKETING, Communist Party of N. J. on, III 323-324
- PIERSON, ARTHUR N., letter to Committee on Rights, etc., on amendments by initiative (petition), III 439
- PLANNING, Albert S. Bard on, III 588-592; letter of Scott Bagby on, III 804-805; letter of A. Thornton Bishop on, III 806; proposals of Montclair Planning Board on, III 860-863; letter of Montclair Planning Board on, III 864-865; letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882
- PLATT, SHERWOOD K., letter to Committee on the Judiciary, on unified court and experience in Cook County, Illinois, IV 707-710
- POCKET VETO (see *Veto, Pocket*)
- POLICE COURTS, UNIFORM SYSTEM OF, Sol D. Kapelsohn on, IV 349-355
- POLITICAL POWER OF PEOPLE, Committee on Rights, etc., votes on provision for, III 167
- POLLSCHUCK, WALTER, appearance before Committee on Rights, etc.; presents views of Young Progressive Citizens of America of Newark on amendments, civil rights, and voting age at 18, III 258-259
- POTTER, FREDERICK A., letter to Committee on Executive, etc., on veterans' preference in civil service, four-year term for Governor, and gubernatorial succession, V 526
- POUND, DEAN ROSCOE, appearance before Committee on the Judiciary; discusses organization and administration of courts, unified court, equity, rule-making power of courts, IV 100-120
- POWELL, CLIFFORD R., MAJOR-GENERAL, appearance before Committee on Executive, etc.; presents views on militia, V 193-203
- POWELL, JOHN KINGSLEY, appearance before Committee on Taxation and Finance; presents views on assessment of property, V 597-598, on taxation, assessment of property, true value, and classification of property, V 813-818
- POWERS OF GOVERNMENT, DISTRIBUTION (see *State Government, Distribution of Powers*)
- PREAMBLE, proposed changes in, discussed by Committee on Rights, etc., III 4; Committee on Rights, etc., votes no changes be made in, III 23, votes on, III 165; Judge Thomas Brown on, III 317-321
- PREROGATIVE COURT, Weidner Titzck on, IV 471-475; George W. C. McCarter on, IV 490-495; Camden County Bar Association report and recommendations on, IV 691-692, 693
- PREROGATIVE WRITS, Herbert J. Hannoeh on, IV 48-55, 537-539, proposal of N. J. State Bar Association, Prerogative Writ Committee, presented to Committee on the Judiciary by, IV 594; Chief Justice Clarence E. Case on, IV 131-150; Russell E. Watson on, IV 150-163; Judge Daniel J. Brennan on, IV 164-183; Dean George S. Harris on, IV 183-193; Justice Frederic R. Colie on, IV 206-223; Samuel Kaufman on, IV 231-240; Attorney-General Walter D. Van Riper on, IV 281-300; Fayette N. Talley on, IV 485-488; George W. C. McCarter on, IV 490-495; Ward Kremer on, IV 498-500; Lawrence A. Carton, Jr. on, IV 518-520; Robert H. Maida on, IV 520-521; Howard Ewart on, IV 521-525; Joseph A. Davis on, IV 541-552; Essex County Bar Association on, IV 599-645; Union County Bar Association on, IV 694-696; Josiah Stryker on, IV 727-728; Charles E. McCraith, Jr. on, IV 732-733
- PRESBYTERY OF MORRIS AND ORANGE, proposal to Committee on Rights, etc., on separation of church and State, III 440
- PRESENTMENT, GRAND JURY, Frank G. Schlosser on, III 180-182; Attorney-General Walter D. Van Riper advises Committee on Rights, etc., on effects of, III 187-190; Committee on Rights, etc., votes to continue "presentment or" in Constitution, III 190-193
- PRINTING OF CONSTITUTION (see *Constitution, Printing and Distribution of*)

PRISON, PRINCIPAL KEEPER OF, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Sanford Bates on, V 177-190; Committee on Executive, etc., votes to delete provision for, V 205

PRIVATE LAWS (*see Laws, Special, Private or Local*)

PRIVATE PROPERTY, PUBLIC USE (*see Condemnation*)

PRIVILEGES, Edwin K. Large on non-inclusion in Constitution, III 153-155; Purdy F. Benedict on, in Constitution, III 300; Rev. J. S. Bishop on, in Constitution, III 301-302; Eugene Bouton on, in Constitution, III 310

PROBATE LAW, *N. J. Law Journal* on, IV 655-681

PROCTOR, HAYDN, member, Committee on the Legislative, III iii

PROFESSIONS, LICENSING, Eric Brown on, III 311-312; Herbert Quittner on, III 441

PROPERTY (*see Condemnation*)

PROPERTY, ASSESSMENT (*see Taxation, Assessment of Property*)

PROPERTY, DISCRIMINATION IN, Jerome C. Eisenberg on, III 109-122; A. LeRoy Jordon on, III 156-157

PROPERTY, PRIVATE, PUBLIC USE (*see Condemnation*)

PROPERTY, PUBLIC, DISCRIMINATION IN USE OF (*see Discrimination*)

PROPERTY, TAXATION (*see Taxation*)

PROPERTY, TAX EXEMPTION (*see Taxation, Exemptions*)

PROPORTIONAL REPRESENTATION, Mrs. W. B. Heinz on, III 17-19; Mrs. J. C. Merrill on, III 580-587

PROSECUTORS OF THE PLEAS, Governor Alfred E. Driscoll on, V 29-46; Committee on Executive, etc., votes on provision for, V 205-206; 289-291, 406; Attorney-General Walter D. Van Riper on, V 337-339

PROVISIONAL COUNCIL OF CHURCHES OF GREATER CAMDEN, Rev. Frank Bateman Stanger presents views of, to Committee on Rights, etc., on separation of church and State, civil rights and gambling, III 158

PUBLIC EMPLOYEES, N. J. Council, State, County and Municipal Workers on collective bargaining of, III 386-392, V 515; N. J. Education Association on contractual status, III 393-394; Gibson Le Roy on, V 157-167

PUBLIC RECORDS (*see Records, Public*)

PUNISHMENTS, Committee on Rights, etc., votes on provision for, III 173-174

PURSEL, JOHN H., member, Committee on Rights, etc., III iii

PYNE, H. RIVINGTON, member, Committee on Rules, Organization and Business Affairs, V iv

Q

QUARTERMASTER-GENERAL, Morgan F. Larson on, V 3-28

QUITTNER, HERBERT, letter to Committee on Rights, etc., on professional licenses, III 441

R

RACE, Mrs. Myra Hacker on, III 178-180; Joseph L. Bustard on definition of, III 329-330

RACING, HORSE (*see Gambling*)

RAFFERTY, JOHN J., appearance before Committee on the Legislative; discusses state aid to charitable institutions, III 675-682; member and secretary, Committee on Taxation and Finance, V iii-iv

RAILROADS, ASSESSMENT (*see Taxation, Assessment of Property*)

RAILROADS, TAXATION (*see Taxation; Taxation, Railroads*)

RANDOLPH, OLIVER, member, Committee on Rights, etc., III iii

READ, WILLIAM T., member and chairman, Committee on Taxation and Finance, V iii-iv

- RECALL, clause recommended to Committee on Rights, etc., III 5; James W. Arrowsmith on, III 33, memorandum of, on, III 794-799
- RECEIVERS, Leo J. St. Clair on, IV 463-467
- RECORDS, PUBLIC, N. J. Taxpayers Association on examination of, III 434
- REDEVELOPMENT, Ernest G. Fifield on, III 537-549; proposal of Monclair Planning Board on, III 860-863; letter and proposal of N. J. Federation of Official Planning Boards on authorities, III 880-882
- REED, DR. THOMAS H., appearance before Committee on the Legislative on behalf of N. J. Committee for Constitutional Revision; discusses annual sessions, legislative procedure, legislative apportionment, salaries of legislators, zoning, home rule, and excess condemnation, III 712-726; appearance before Committee on Executive, etc., on behalf of N. J. Committee for Constitutional Revision; presents views on Governor: powers, term of four years, succession, election in odd-numbered years, *ad interim* appointments; veto, limitation of departments to 20, *quasi*-independent departments, administration and reorganization of departments, power of removal by Governor, cabinet, regulations of administrative agencies to be published, and special sessions, V 365-383
- REFERENDUM, clause recommended to Committee on Rights, etc., III 5; James W. Arrowsmith on, III 33, memorandum of, on, III 794-799; Miss Bertha Lawrence on, III 103-106; Committee on Rights, etc., defeats proposal for provision, III 192-193; N. J. Education Association on, III 393-394; N. J. State Federation of Labor on, III 423-425; letter and resolution of Township of Millburn on, III 857-859; John Bebout on, V 112-127; Thomas L. Parsonnet on, V 127-132; Committee on Executive, etc., discusses and refers to Committee on Legislative question of, V 262-263
- REFERENDUM, CONSTITUTION ADOPTION (see *Constitution, Referendum*)
- REFERENDUM, LIMITED, proposals of N. J. Committee for Constitutional Revision on, III 866-871
- REFORMED SYNOD OF NEW JERSEY, Rev. Marvin W. Green presents views of, to Committee on the Legislative on gambling, bingo, pari-mutuel betting, and horse-racing, III 517-528
- REGULATORY AGENCIES, Frank H. Sommer on, V 529-531
- REINERS, JOHN HENRY, JR., appearance before Committee on the Judiciary; discusses report of Camden County Bar Association on Court of Chancery and appointment of vice-chancellors, IV 471-485
- RELIEF, PUBLIC, N. J. League of Women Voters on, III 356-361, recommendations of, on, III 849-854
- RELIGION, "right of" recommended to Committee on Rights, etc., III 5; no disqualification as witness recommended to Committee on Rights, etc., because of failure to have, III 5; Joseph L. Bustard on definition of, III 329-330 (see also, *Freedom of Worship*)
- RELIGIOUS INSTITUTIONS, TAX EXEMPTION, John A. Matthews on, V 651-655; John J. Crean on, V 655; Augustine V. Gribbin on, V 655-656; John N. Nolan on, V 656
- RELIGIOUS TEST, James Kerney, Jr. on, III 96-101; Committee on Rights, etc., defers action on provision for, III 167, votes on provision, III 183, 194-195; Joint Committee on Constitutional Bill of Rights on, III 343-355
- REMOVAL OF OFFICERS (see *Governor, Removal Power*)
- REORGANIZATION OF DEPARTMENTS (see *Departments, reorganization of*)
- REPRIEVES, Committee on Executive, etc., votes to provide provision for, V 209-220; N. J. Manufacturers Association on, V 516-517
- REPUBLICAN COUNCIL OF HUDSON COUNTY, Anthony De Feore presents views of, to Committee on the Legislative on gambling and bingo, III 751-752
- REPUBLICAN VETERANS' LEAGUE, Anthony De Feore presents views of, to

- Committee on the Legislative on gambling and bingo, III 751-752
- REVISION COMMISSION OF 1944, Robert C. Hendrickson discusses proposals made by, with Committee on the Judiciary, IV 5-16
- REVISION, CONSTITUTION, PERIODIC, Mrs. Arthur C. Gillette on, III 27-28; Winston Paul on, III 28-29; 175-178; Irving Leuchter on, III 28-33; Committee on Rights, etc., votes on proposal concerning, III 37, defeats proposal, III 194; Mrs. Herbert Davis on, III 88; James Kerney, Jr. on, III 96-101, Carl Holderman on, III 122-132; 212-219; George Greenleaf on, III 132-137; Robert C. Hendrickson on, III 168-171, 335-341; Mrs. Myra Hacker on, III 178-180; Mrs. Frank Fobert on, III 223-227; Thomas Parsonnet on, III 231-243; Jesse Moskovitz on, III 264-271; American Federation of Hosiery Workers, Branch 166, on, III 291; John E. Bebout on, III 295-299; Kirk Brown on, III 313-315; N. J. League of Women Voters on, III 356-361; 362-363; N. J. Committee for Constitutional Revision on, III 376; N. J. Committee for Constitutional Revision, Committee on Research and Drafting, on, III 377-383; N. J. Farm Bureau and N. J. State Grange on, III 401-403; N. J. Federation of Women's Clubs on, III 404-405; N. J. State Industrial Union Council, C.I.O. on, III 414; 429-433; N. J. State Federation of Labor on, III 423-425; United Office and Professional Workers of America, C.I.O. on, III 453
- REVENUE BILLS, Committee on the Legislative votes on provision for bills to originate in Assembly, III 658
(see also, *Legislature, Procedure*)
- REVENUE, STATE (see *State Finances, Revenues*)
- REVISED CONSTITUTION OF 1944, PROPOSED, excerpts relating to Legislative Article, III 784-791
- RICH, BENNETT M., appearance before Committee on Executive, etc.; presents views of N. J. Committee for Constitutional Revision on Governor: term, succession, election in odd-numbered years, date of taking office, vacancy in office; Lieutenant-Governor, Administrative Manager of State, veto, consolidation and reorganization of departments, and civil service, V 104-112
- RIGHTS AND PRIVILEGES, Committee on Rights, etc., votes to include overall provision for, III 174; Eugene Bouton on, III 305-309
- RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS, COMMITTEE ON, members of, III iii; organization meeting, III 1-3; record of proceedings before, III 1-271; appendix to, III 273-468; votes to sign report and proposals, III 210-211
- ROSENBERG, MORRIS, letter to Committee on the Judiciary, on Court of Chancery, IV 711-712
- ROTHEN, MARSHALL G., invites members of Committee on Taxation and Finance to appear on Rutgers Forum, V 597
- RUBIN, MRS. GUSSIE, appearance before Committee on the Judiciary, IV 517-518
- RULE-MAKING POWER (see *Courts, Rule-Making Power*)
- RULES COMMISSION, George W. C. McCarter on, IV 38-48
- RULES OF COURT (see *Courts, Rule-Making Power; Rules Commission*)
- RULES, ORGANIZATION AND BUSINESS AFFAIRS, COMMITTEE ON, organization of, V iv; members of, V iv; statement of policy of, V 1067
- RUTGERS FORUM, members of Committee on Taxation and Finance invited to appear on, V 597
- RUTGERS UNIVERSITY, TRUSTEES OF, Russell E. Watson presents views of, to Committee on Taxation and Finance, on tax exemption for educational institutions, V 733-737

S

- ST. CLAIR, LEO J., appearance before Committee on the Judiciary; discusses Court of Chancery, receivership, and unified court, IV 463-467
- ST. JOHN'S METHODIST CHURCH, Rev. Leopold Schneider presents views of, to Committee on the Legislative on gambling and bingo, III 739-740

- SANFORD, MRS. OLIVE C., member, Committee on the Legislative, III iii
- SAUNDERS, WILBOUR E., member and chairman, Committee on Submission and Address, V iv
- SCHAEFER, WALTER, appearance before Committee on Rights, etc.; presents plans for providing vote on the basis of place of employment, III 84-88
- SCHEDULE, CONSTITUTION, Committee on Rights, etc., discusses, III 25-26
- SCHENK, JOHN F., member and chairman, Committee on Rights, etc., III iii
- SCHLOSSER, FRANK G., appearance before Committee on Rights, etc.; discusses his proposals for abolition of prosecution for common law crimes, implementation of search and seizure clause, and elimination of grand jury presentment, III 180-182
- SCHLUTER, FRED E., appearance before Committee on Executive, etc.; presents views on responsibilities of the Governor, V 343-344
- SCHNEIDER, REV. LEOPOLD, appearance before Committee on the Legislative; presents views of St. John's Methodist Church and Hudson Methodist Parish on gambling and bingo, III 739-740
- SCHNITZER, MORRIS M., appearance before Committee on the Judiciary; discusses report of Committee of Essex County Bar Association on unified court; favors consolidation of Court of Chancery, IV 67-77; discusses rule-making power, IV 77
- SCHOOL-BUS CASE, NEW JERSEY, Weidner Titzck on, III 149-153; analysis of decision on, presented to Committee on Rights, etc., III 466-468
- SCHOOL FUND, STATE (see *State School Fund*)
- SCHOOLS (see *Education*)
- SCOTT, I. GRANT, letter to Committee on Executive, etc., on gubernatorial succession, V 527-528
- SEAL, STATE, Committee on Rights, etc., discusses provision on, III 12, votes to retain provision for, III 25, votes provision for, III 193
- SEARCH AND SEIZURE, Frank G. Schlosser on, III 180-182; Committee on Rights, etc., defeats proposal to include provision forbidding use of evidence obtained during, III 193
- SECRETARY OF STATE, Committee on Rights, etc., votes to delete provision for, as Auditor of Accounts of the Treasury, III 24-25, 160, votes provision for duties of, III 160-161; Committee on Executive, etc., votes to delete provision for, V 206, votes to include provision for, V 415
- SEIFFERT, MORGAN R., appearance before Committee on the Judiciary; discusses position of Law Reform Committee of N. J. State Bar Association on unified court jurisdiction of Supreme Court, appeals, retirement of judges, Administrative Director of Courts, and Chancery Court, IV 514-517
- SELF INCRIMINATION, suggestion to Committee on Rights, etc., that no person be compelled to be witness against self in criminal cases, III 8-9
- SENATE, MEMBERS, ELECTION, Committee on the Legislative defers action on provision for, III 482, votes provision for, III 657; Morgan F. Larson on, V 3-28
- SENATE, MEMBERS, QUALIFICATIONS, Committee on the Legislative votes on provision for, III 481, 646, 657
- SENATE, MEMBERS, TERM, Committee on the Legislative votes on provision for, III 482; John Bebout on, III 565-580; Mrs. J. C. Merrill on, III 580-587; Robert C. Hendrickson on, III 592-613; Irving Leuchter on, III 614-617
- SENATE, NOMINATIONS, ACTION ON, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; A. Harry Moore on, V 62-73; Charles R. Erdman, Jr. on, V 88-104; Mrs. Charles Kellers on, V 132-136; memorandum of Charles Edison on, V 459-461; N. J. League of Women Voters on, V 475-480; N. J. Committee for Constitutional Revision on, V 498-499
- SENATE, VACANCIES, Committee on the Legislative votes provision for, III 482
- SENATOR, UNITED STATES, ELECTION, Governor Alfred E. Driscoll on, V 29-46

SEPARATION OF POWERS (see *State Government, Distribution of Powers*)

SEUFERT, MISS EVELYN, appearance before Committee on the Judiciary; presents plan (drafted with John Bebout) on reorganization of judiciary; recommends unified court, Judicial Council, judicial tenure, and Chief Justice as administrator of courts, IV 26-37

SEX, statement of the N. J. Conference of the Methodist Church on, III 874-877 (see also, *Equal Rights*)

SHERIFFS, Alex Campbell on, IV 393-395; Committee on Executive, etc., votes on provision for, V 291-295

SHERIFF'S ASSOCIATION OF NEW JERSEY, Alex Campbell presents views of, to Committee on the Judiciary on status and succession of sheriffs, IV 393-395

SHORE, REV. ALEX, appearance before Committee on the Legislative; presents views of New Brunswick Council of Churches on gambling, III 756

SIMANDL, HAROLD, appearance before Committee on the Judiciary on behalf of the Essex County Bar Association, IV 62-63

SINGLE BUDGET (see *State Finances, Single Budget*)

SINGLE FUND (see *State Finances, Single Fund*)

SLUM CLEARANCE, letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882

SLY, DR. JOHN F., appearance before Committee on Taxation and Finance; presents views on taxation, tax clause, assessment of property, classification of property, true value, and standards of value, V 619-625

SMALL BUSINESS ASSOCIATION OF NEW JERSEY, Lewis E. Thompson presents views of, to Committee on Rights, etc., on amendments, and collective bargaining, III 259-261, to Committee on Executive, etc., on limitation of departments to 20, V 395-396

SMITH, GEORGE F., member, Committee on the Judiciary, IV iii

SMITH, JAMES J., appearance before Committee on the Legislative; presents views of N. J. League of Municipalities on home rule, III 759-762; appearance before Committee on Taxation and Finance; presents views of N. J. State League of Municipalities on taxation, assessment of property; and exemption from taxation, V 560-562, on dedication of funds, V 720-722

SMITH, J. B. R., memorandum to Committee on Rights, etc., on Bill of Rights, III 442-444, on right of suffrage and qualifications for voting, III 445-447

SMITH, J. SPENCER, member, Committee on Executive, etc., V iii

SMITH, JUDGE WILLIAM A., appearance before Committee on the Judiciary; discusses appellate court and unified court, IV 193-200

SMITH, JUDGE WILLIAM F., appearance before Committee on the Judiciary; discusses tenure, appointment, removal and retirement of judges, unified court, rule-making power of courts and judicial power, IV 305-328

SOCIETY OF CONSTITUTIONAL SECURITY, CHAPTER 1, Mrs. Myra Hacker presents views of, to Committee on Rights, etc., on periodic revision of Constitution, amendment, "persons" to be used instead of "men," in Constitution, race or color, and discrimination, III 178-180

SOLDIERS, QUARTERING OF, Committee on Rights, etc., votes on provision for, III 173-174

SOMMER, FRANK H., member and chairman, Committee on the Judiciary, IV iii; letter to Committee on Executive, etc., on regulatory agencies in departmental reorganization, V 529-531

SPECIAL LAWS (see *Laws, Special, Private or Local*)

SPECIAL SESSIONS (see *Legislature, Sessions, Special*)

SPEECH, FREEDOM OF (see *Freedom of Speech*)

STANDARDS OF VALUE (see *Taxation, Assessment of Property*)

STANGER, FRANCIS A., JR., member, Committee on Rights, etc., III iii

STANGER, REV. FRANK BATEMAN, appearance before Committee on Rights, etc.; presents recommendation of Camden County Ministerial Association, Provisional Council of Churches of Greater Camden County, Camden Metho-

- dist Society, Methodist Summer Assembly and Sunday League, Inc., to Committee on Rights, etc., on separation of church and State, civil rights and gambling, III 158; statement to Committee on Rights, etc., on separation of church and State, civil rights and gambling, III 448-450
- STANTON, RUSSELL, appearance before Committee on the Legislative; presents views of Fraternal Order of Eagles on bingo and gambling, III 742-743
- STATE ADMINISTRATIVE MANAGER, Bennett M. Rich on, V 104-112; N. J. League of Women Voters on, V 475-480
- STATE AID, Committee on the Legislative rejects proposal, for charitable institutions, III 764; recommendations of N. J. State Federation of Labor on, for education, III 885-887; John J. Rafferty on, to charitable institutions, V 675-682
(see also, *Education, State Aid for*)
- STATE AID FOR EDUCATION (see *Education, State Aid For*)
- STATE ASSOCIATION OF BOARDS OF FREEHOLDERS, A. Paul King presents views of, to Committee on Taxation and Finance on dedication of funds, V 700-702
- STATE AUDITOR, Mrs. J. C. Merrill on election by Legislature, III 580-587; Committee on the Legislative votes on provision that he be only state official elected by Legislature, III 648-649, votes on provision for election by Legislature, III 658, recommends election by Legislature, III 763-764; Charles O. Frye on, III 685-688; Arthur T. Vanderbilt proposes to Committee on the Legislative that Comptroller General be elected in place of, III 764; recommendations of N. J. League of Women Voters on election by Legislature, III 849-854; Governor Alfred E. Driscoll on election by Legislature, V 29-46; Harold G. Hoffman on election by Legislature, V 46-58; John Bebout on election by Legislature, V 112-127; Mrs. Edwin Bebout on being constitutional office, V 170-175; Committee on Executive, etc., on provision for election by Legislature, V 404
- STATE COUNCIL AGAINST DISCRIMINATION, proposal to Committee on Rights, etc., on discrimination, III 451
- STATE, COUNTY AND MUNICIPAL WORKERS, Gibson Le Roy presents views of, to Committee on Rights, etc., on collective bargaining, III 220-223
- STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION OF NEW JERSEY, letter to Committee on Rights, etc., on Bill of Rights, III 452; Charles A. Brown presents views of, to Committee on Taxation and Finance on taxation, schools, State School Fund, tax clause, taxation of railroads, assessment of property, and state aid for education, V 625-635; Edward A. Kilpatrick presents views of, to Committee on Taxation and Finance on taxation, and assessment of property, V 728-729
- STATE FINANCES, Charles R. Erdman, Jr. on, V 88-104; Frank E. Walsh on, V 539-541
- STATE FINANCES, APPROPRIATIONS, Homer C. Zink on, V 535-539, 584-596; Abram M. Vermeulen on, V 542-543; Harry W. Wolkstein on, V 556-560; Frank E. Walsh on, V 591-596; Robert C. Hendrickson on, V 599-609; Mrs. Irene Baldwin on V 747-749; R. Robinson Chance on, V 844-846; recommendations of N. J. League of Women Voters on, V 850-852; recommendations of N. J. Committee for Constitutional Revision on, V 862; recommendations of N. J. State Industrial Union Council, C.I.O. on, V 894
- STATE FINANCES, BUDGET, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Charles R. Erdman, Jr. on, V 88-104; N. J. Committee for Constitutional Revision on, V 498-499, recommendations of, on, V 862; recommendations of N. J. League of Women Voters on, V 850-852; recommendations of N. J. State Industrial Union Council, C.I.O. on, V 894
- STATE FINANCES, CREDIT OF STATE, Alvin A. Burger on, V 543; Homer C. Zink on, V 584-596
- STATE FINANCES, DEBT, Abram M. Vermeulen on, V 542-543; Alvin A. Burger on, V 543; Homer C. Zink on, V 584-596; Robert C. Hendrickson on, V 599-609; R. Robinson Chance on, V 844-846

- STATE FINANCES, DEDICATION OF FUNDS, A. R. Everson on, V 543, 741-747; Alvin A. Burger on, V 543; Harry W. Wolkstein on, V 556-560; William J. Gaffney on, V 576-578, 702-720; Charles J. Dodge on, V 578-583; Robert C. Hendrickson on, V 599-609; J. H. Thayer Martin on, V 610-619; James Kerney, Jr. on, V 646-650; Mrs. Kathryn D. Sullivan on, V 688-691; Franklin C. Nixon on, V 691-694; William L. Mallon on, V 694-698; Daniel J. Crecca on, V 698-700; A. Paul King on, V 700-702; James J. Smith on, V 720-722; Mrs. Irene Baldwin on, V 747-749; Governor Alfred E. Driscoll, on V 770-778; R. Robinson Chance on, V 844-846; brief of N. J. Highway Users' Conference on, V 869-891
- STATE FINANCES, REVENUE, Harry W. Wolkstein on, V 556-560; recommendations of N. J. League of Women Voters on, V 850-852
- STATE FINANCES, SINGLE BUDGET, Homer C. Zink on, V 535-539; Abram M. Vermeulen on, V 542-543; Alvin A. Burger on, V 543; A. R. Everson on, V 543; Harry W. Wolkstein on, V 556-560; Robert C. Hendrickson on, V 599-609; James Kerney, Jr. on, V 646-650
- STATE FINANCES, SINGLE FISCAL YEAR, Homer C. Zink on, V 535-539; Alvin A. Burger on, V 543; J. H. Thayer Martin on, V 610-619; A. R. Everson on, V 741-747; Mrs. Irene Baldwin on, V 747-749; recommendations of N. J. State Industrial Union Council, C.I.O. on, V 894; recommendations of N. J. League of Women Voters on, V 850-852; recommendations of N. J. Committee for Constitutional Revision on, V 862
- STATE FINANCES, SINGLE FUND, James Kerney, Jr. on, V 646-650; A. R. Everson on, V 741-747; Mrs. Irene Baldwin on, V 747-749; recommendations of N. J. League of Women Voters on, V 850-852; recommendations of N. J. Committee for Constitutional Revision on, V 862; recommendations of N. J. State Industrial Union Council, C.I.O. on, V 894
- STATE GOVERNMENT, DISTRIBUTION OF POWERS, Mrs. J. C. Merrill on, III 688-691; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; John Bebout on, V 112-127
- STATE LIBRARIAN, Charles O. Frye on, III 685-688
- STATE SCHOOL FUND, Frank E. Walsh on, V 539-541, 591-596; Alvin A. Burger on, V 543; Miss Bertha Lawrence on, V 562-563; Homer C. Zink on, V 584-596; Charles A. Brown on, V 625-635
- STATE SEAL (see *Seal, State*)
- STATE UNIVERSITY, FREE, recommendations of N. J. State Federation of Labor on, III 885-887, 893
- STREETTER, MRS. RUTH C., member, Committee on Taxation and Finance, V iii
- STREETS, MAPS, OFFICIAL, Ernest G. Fifield on, III 537-549; proposals of Montclair Planning Board on, III 860-863; letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882
- STRUBLE, CLYDE W., member, Committee on Taxation and Finance, V iii
- STRYKER, JOSIAH, appearance before Committee on the Judiciary; discusses Court of Chancery, equity, unified court, appeals, compensation, appointment and qualifications of judges, IV 374-388; letter to Committee on the Judiciary, on Court of Chancery, prerogative writs, appointment of judges, and appeals, IV 727-728
- SUBJECT TO LAW, COURTS, N. J. State Federation of Labor on, IV 700
- SUBJECT TO LAW, RULES, N. J. League of Women Voters on, IV 595-598; Arthur T. Vanderbilt on, IV 729-731
- SUBMISSION AND ADDRESS TO THE PEOPLE, COMMITTEE ON, organization of, V iv; members of, V iv; proceedings of, V 909-995
- SUFFRAGE, Committee on Rights, etc., discusses constitutional provision on, III 11-12, votes on provision for, III 161-162, votes on provision dealing with persons convicted of crime, III 164, discusses provision for idiot or mentally incompetent person, III 185-186, votes provision on right of person convicted of crime, III 204-205; Richard P. McCormick on paupers, idiots, insane persons and criminals, III 20-22; Walter Schaefer on, III 84-88; N. J. League of

- Women Voters on, III 356-361; N. J. Committee for Constitutional Revision on, III 376-383; N. J. State Federation of Labor on, III 423-425; J. B. R. Smith on, III 445-447; George Wilson on, III 460-461
(see also, *Elections; Voting, Absentee, and Voting Age*)
- SUFFRAGE, ABSENTEE VOTING (see *Voting, Absentee*)
- SUFFRAGE, COUNTY RESIDENCE, Mrs. W. B. Heinz on, III 17-19
- SUFFRAGE, VOTING AGE (see *Voting Age*)
- SULLIVAN, CHARLES P., appearance before Committee on Rights, etc.; presents recommendations of American Veterans of World War II, N. J. State Department, on inclusion of privileges for veterans in Constitution, III 155-156
- SULLIVAN, MRS. KATHRYN D., appearance before Committee on Taxation and Finance; presents views of N. J. Conference of AAA Automobile Clubs on dedication of funds, V 688-691
- SUMMARY AND ADDRESS TO PEOPLE, PUBLICATION AND DISTRIBUTION OF, Ernest Kerr on, V 958-966; Arthur C. Kammerman on, V 967-977; George Hastings on, V 972-977
- SUMMERILL, CHARLES, appearance before Committee on the Judiciary; discusses views of Hunterdon County Bar Association on county courts; presents own views on justices of the peace, IV 540-541
- SUNDAY, Rev. Harry L. Bowlby on, III 80-82, on gambling on, III 626-630; A. C. Brady on, III 157-158; Lord's Day Alliance of the U. S. on, III 367-369; statement of the N. J. Conference of the Methodist Church on, III 874-877
- SUNDAY LEAGUE, INC., Rev. Frank Bateman Stanger presents views of, to Committee on Rights, etc., on separation of church and State, civil rights and gambling, III 158
- SUPERIOR COURT, Robert C. Hendrickson on, IV 5-16
- SUPERIOR COURT, APPELLATE DIVISION, Robert C. Hendrickson on, IV 5-16
- SUPREME COURT, Robert C. Hendrickson on, IV 5-16; Governor Alfred E. Driscoll on, IV 427-445; Morgan R. Seiffert on, IV 514-517; G. W. C. McCarter on, IV 584-593; N. J. League of Women Voters on, IV 595-598; Essex County Bar Association on, IV 599-645; Sol Kantor on, IV 736-738
- SURROGATES, Charles A. Otto, Jr. on, IV 391-392; Chancellor A. Dayton Oliphant on, IV 396-415; Harold G. Hoffman on vacancy in office, V 46-58; Committee on Executive, etc., votes on provision for, V 291-295
- SUTTON, FRANK W., JR., appearance before Committee on the Judiciary; recommends retention of Court of Chancery, IV 300-304
- SWACKHAMMER, SAMUEL S., appearance before Committee on Rights, etc., III 33; appearance before Committee on the Legislative; presents views on gambling, III 745-748

T

- TAGGERT, THOMAS D., JR., letter to Committee on the Legislative, on legislative practices, voting procedures in the Assembly, acceptance of rewards by members of the Legislature, lobbying, caucus, and dual office holding by members of the Legislature, III 893-899
- TALLEY, FAYETTE N., appearance before Committee on the Judiciary; presents results of questionnaire sent out by Union County Bar Association on court of appeals, unified court, retirement and removal of judges, prerogative writs, and appeals, IV 485-488
- TATE, H. H., appearance before Committee on Rights, etc.; presents views of Joint Committee on Constitutional Bill of Rights on discrimination in civil rights, III 243-248
- TAXATION, Aaron K. Neeld on, V 541-542, memorandum of, on, V 853-855; Alvin A. Burger on, V 543; Harry W. Wolkstein on, V 556-560; James J. Smith on, V 560-562; Milton B. Conford on, V 563-576, 639-645, 759-768; Robert C. Hendrickson on, V 599-609; J. H. Thayer Martin on, V 610-619; Dr. John F. Sly on, V 619-625; Charles A. Brown on, V 625-635; Joseph G.

Higgins on, V 635-638; Homer C. Zink on, V 723-727, 818-824; Edward W. Kilpatrick on, V 728-729; Anthony Daly on, V 729-733; John F. O'Brien on, V 737-741, 781-786; A. R. Everson on, V 741-747; Mrs. Irene Baldwin on, V 747-749, 808-809; Thomas E. Hunt on, V 750-751; Jacob Fox on, V 751-758; Governor Alfred E. Driscoll on, V 770-778; Ormonde A. Kieb on, V 786-788; Charles O. Frye on, V 806-808; John Kingsley Powell on, V 813-818; memorandum of Associated Railroads of N. J. on, V 837-843; proposal of N. J. Association of County Tax Board Commissioners and Secretaries on, V 856-858; statement of N. J. Association of Real Estate Boards on, V 859-861, analysis of, V 898-908; recommendations of N. J. Committee for Constitutional Revision on, V 862; recommendations of N. J. State Chamber of Commerce on, V 892; recommendations of N. J. State Industrial Union Council, C.I.O. on, V 894; memorandum of N. J. Taxpayers Association on, V 895-897

TAXATION AND FINANCE, COMMITTEE ON, members, V iii; organization, V iii-iv; proceedings, V 533-824; appendix to proceedings, V 825-908; proceedings, June 24, 1947, *Newark Evening News* account, V 832-834

TAXATION, ASSESSMENT OF PROPERTY, Frank Boscaino on, IV 718-720; Homer C. Zink on, V 535-539, 584-596, 723-727, 818-824; Frank E. Walsh on, V 539-541; Aaron K. Neeld on, V 541-542, memorandum of, on, V 853-855; John F. O'Brien on, V 543-544, 737-741, 781-786; Harry W. Wolkstein on, V 556-560; James J. Smith on, V 560-562; Miss Bertha Lawrence on, V 562-563; Milton B. Conford on, V 563-576; 759-768; John Kingsley Powell on, V 597-598, 813-818; Robert C. Hendrickson on, V 599-609; J. H. Thayer Martin on, V 610-619; Dr. John F. Sly on, V 619-625; Charles A. Brown on, V 625-635; Joseph G. Higgins on, V 635-638; Edward W. Kilpatrick on, V 728-729; A. R. Everson on, V 741-747; Thomas E. Hunt on, V 750-751; Governor Alfred E. Driscoll on, V 770-778; Ormonde A. Kieb on, V 786-788; Charles O. Frye on, V 806-808; Mrs. Irene Baldwin on, V 808-809; R. Robinson Chance on, V 844-846; resolution of City Council of Elizabeth on, V 847; recommendations of N. J. League of Women Voters on, V 850-852; proposal of N. J. Association of County Tax Board Commissioners and Secretaries on, V 856-858; statement of N. J. Association of Real Estate Boards on, V 859-861, analysis of, V 898-908; recommendations of N. J. Committee for Constitutional Revision on, V 862; recommendations of N. J. State Chamber of Commerce on, V 892; recommendations of N. J. State Industrial Union Council, C.I.O. on, V 894; memorandum of N. J. Taxpayers Association on, V 895-897

TAXATION, EXEMPTIONS, Joint Committee on Constitutional Bill of Rights on loss of by institutions, etc., practicing discrimination, III 343-355; A. Harry Moore on, V 62-73; Frank E. Walsh on, V 539-541; Aaron K. Neeld on, V 541-542; Alvin A. Burger on, V 543; A. R. Everson on, V 543, 741-747; John F. O'Brien on, V 543-544; Paul Ewing on, V 545-554; W. H. Connell on, V 554-556; James J. Smith on, V 560-562; Robert C. Hendrickson on, V 599-609; J. H. Thayer Martin on, V 610-619; John A. Matthews on, V 651-655; John J. Crean on, V 655; Augustine V. Gribbin on, V 655-656; John J. Nolan on, V 656; Joseph H. Edgar on, V 656-664; Homer C. Zink on, V 723-727; Anthony Daly on, V 729-733; Russell E. Watson on, V 733-737; Governor Alfred E. Driscoll on, V 770-778; Ormonde A. Kieb on, V 786-788; Mrs. Irene Baldwin on, V 808-809; Leo Pfeiffer on, V 809-813; letter of Colonia Post 248, American Legion, on, V 835; resolution of American Veterans of World War II, Department of N. J., V 836; R. Robinson Chance on, V 844-846; proposal of N. J. Association of County Tax Board Commissioners and Secretaries on, V 856-858; statement of N. J. Association of Real Estate Boards on, V 859-861; recommendation of N. J. Committee for Constitutional Revision on, V 862; recommendations of N. J. State Chamber of Commerce on, V 892; recommendation of N. J. State Industrial Union Council, C.I.O. on, V 894; memorandum of N. J. Taxpayers Association on, V 895-897
(see also, *Discrimination*)

TAXATION, INHERITANCE TAXES, William D. Kelly on, V 541

TAXATION, RAILROADS, J. H. Thayer Martin on, V 610-619; Charles A. Brown on, V 625-635; Joseph G. Higgins on, V 635-638; Milton B. Conford on, V 639-645, 759-768; John F. O'Brien on, V 737-741; Jacob Fox on, V 751-758;

- Homer C. Zink on, V 818-824; memorandum of Associated Railroads of N. J. on, V 837-843; memorandum of Aaron K. Neeld on, V 853-855
- TAXATION, TAX CLAUSE (see *Taxation, Assessment of Property*)
- TAXATION, TAX LIMITATION, A. R. Everson on, V 543
- "TAXATION WITHOUT REPRESENTATION," Walter Schaefer on, III 84-88
- TAX CLAUSE (see *Taxation*; and *Taxation, Assessment of Property*)
- TAX LIMITATION (see *Taxation, Tax Limitation*)
- TAYLOR, WESLEY, member, Committee on Rights, etc., III iii
- TEACHERS (see *Education*)
- TENURE (see *Judges, Tenure*)
- THOMAS, BEN, appearance before Committee on Executive, etc.; presents views of Veterans of Foreign Wars of the United States, Department of N. J. on militia, V 359-364
- THOMPSON, MRS. GERALDINE S., appearance before Committee on Rights, etc.; discusses rights of women, III 167
- THOMPSON, LEWIS E., appearance before Committee on Rights, etc.; presents views of Small Business Association of N. J. on amendments and collective bargaining, III 259-261; appearance before Committee on Executive, etc.; presents views of Small Business Association of N. J. on limitation of departments to 20, V 395-396
- TIERNEY, GEORGE, appearance before Committee on Executive, etc.; presents views of N. J. Grange, N. J. Farm Bureau, United Milk Producers of N. J., N. J. State Poultry Association, N. J. State Potato Association, N. J. State Agricultural Society and N. J. State Horticultural Society, on State Board of Agriculture, Department of Agriculture and Secretary of Agriculture, V 142-150
- TISCH, A. MARCUS, appearance before Committee on the Legislative; presents views of Disabled Americans Veterans, Department of N. J., on bingo, III 755-756
- TITZCK, WEIDNER, appearance before Committee on Rights, etc.; presents statement of N. J. Taxpayers Committee to Preserve Separation of Church and State on separation of church and State; discusses N. J. school-bus case, III 149-153; appearance before Committee on the Judiciary; presents views of Camden County Bar Association on justices of the peace, county courts, Court of Chancery, appointment of vice-chancellors, Prerogative Court, appeals, Court of Pardons, tenure and qualifications of judges, IV 471-475; appearance before Committee on Taxation and Finance; presents views of N. J. Taxpayers Committee to Preserve Separation of Church and State, and N. J. Council of Christian Churches on transportation of children to schools, V 789-799
- TORREY, ARTHUR M., appearance before Committee on Rights, etc.; presents views on no labor rights provision, III 261-262
- TRANSPORTATION, SCHOOL CHILDREN (see *Education, Transportation of Pupils*)
- TREASON, Committee on Rights, etc., discusses clarification as to whether overthrow of the government or advocacy of same by force be considered, III 9-10, votes on provision for, III 173-174; N. J. Women's Government Study Council on, III 435-437
- TREASURY, Committee on Rights, etc., votes to delete provision for Secretary of State as Auditor of Accounts of, III 24-25
- TRINITY METHODIST CHURCH, MEN OF, letter to Committee on the Legislative on gambling, III 855-856
- TRUE VALUE (see *Taxation*; and *Taxation, Assessment of Property*)

U

- UNIFIED COURTS (see *Courts, Unification of*)
- UNION COUNTY BAR ASSOCIATION, Fayette N. Talley presents to Committee on the Judiciary results of questionnaire on court of appeals, unified

- court, retirement and removal of judges, prerogative writs and appeals, IV 485-488; Emanuel Wagner presents views of, to Committee on the Judiciary on retirement of judges and county courts, IV 513-514; report submitted to Committee on the Judiciary on poll of members on court of appeals, unified court, Court of Chancery, retirement age, impeachment and assignment of judges, prerogative writs and appeals, IV 694-696
- UNION COUNTY FEDERATION OF HOLY NAME SOCIETIES, James Devlin, Jr. presents views of, to Committee on the Legislative on gambling, III 620-621
- UNION COUNTY REPUBLICAN COMMITTEE, resolution to Committee on the Judiciary, on county courts, IV 742
- UNITED MILK PRODUCERS OF NEW JERSEY, George Tierney presents views of, to Committee on the Executive, etc., on State Board of Agriculture, Department of Agriculture and Secretary of Agriculture, V 142-150; statement on selection of members of State Board of Agriculture, V 488-490
- UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, C.I.O., letter to Committee on Rights, etc., on discrimination, collective bargaining, amendment, civil rights, no discrimination in use of public property, no tax exemption to institutions which practice discrimination, initiative, periodic revision of Constitution, III 453
- UNITED PUBLIC WORKERS OF THE STATE OF NEW JERSEY, Anthony Vitrone presents views of, to Committee on Rights, etc., on collective bargaining, and rights of labor, III 219-220
- UNITED SPANISH WAR VETERANS, DEPARTMENT OF NEW JERSEY, George Milligan presents recommendation of, to Committee on Rights, etc., on civil service preference for veterans, III 153
- URBAN COLORED POPULATION COMMISSION, STATE OF NEW JERSEY, A. Le Roy Jordon presents recommendations of, to Committee on Rights, etc., on civil rights, discrimination, and discrimination in property, III 156-157; resolution of, to Committee on Rights, etc., on discrimination and civil rights, III 454-455

V

- VAN ALSTYNE, DAVID, JR., member and chairman, Committee on Executive, etc., V iii
- VANDERBILT, ARTHUR T., proposes to Committee on the Legislative election of Comptroller General in place of State Auditor, III 764; letter to Committee on the Judiciary, on rule-making power of courts, appellate division, review of indictments, appointment of county judges, tenure of judges, and administration of courts, IV 729-731
- VAN RIPER, WALTER D., ATTORNEY-GENERAL, advises Committee on Rights, etc., on effects of presentment by grand jury, III 187-190; advises Committee on the Legislative it cannot act on proposal for Assembly districts, III 641-644; appearance before Committee on the Legislative; discusses gambling, bingo, alternative proposals to Constitution, pari-mutuel betting and Assembly districts, III 661-675; appearance before Committee on the Judiciary; discusses unified court, administration of courts, appeals, rule-making power of courts, Court of Pardons, tenure, removal and appointment of judges, prerogative writs, equity, IV 281-300; appearance before Committee on Executive, etc.; presents views on appointment and removal of county prosecutors, V 337-339; appearance before Committee on Submission and Address; discusses what constitutes a part of the Constitution on submission, power of Convention to submit alternate proposals, and what constitutes a majority of the Convention on voting, V 911-931; discusses what constitutes a part of the Constitution on submission, and the power of the Convention to submit alternate proposals, V 933-956
- VERMEULEN, ABRAM M., appearance before Committee on Taxation and Finance; presents views on state appropriations, single budget and state debt, V 542-543

- VETERANS, Richard Thomas Duffy on, III 54-56; American Legion, Department of N. J., urges inclusion of provision for exemptions, privileges and preferences for, III 292-293; American Veterans of World War II, N. J. State Department, urges inclusion of provision on exemptions, privileges and preferences, III 294; resolution of Jewish War Veterans of the United States, Department of N. J. on rights and privileges of, III 342; Veterans of Foreign Wars of the United States on preferences, privileges and exemptions, III 456-457; William Sumner Lewis Post No. 222 on preferences, privileges and exemptions, III 458-459
- VETERANS, CIVIL SERVICE PREFERENCE, William G. McKinley on, III 56-59; Alexander Ormsby on, III 138-143; George Milligan on, III 153; N. J. League of Women Voters on, III 365-366; Committee on Executive, etc., votes provision for, V 282-287; letter of American Veterans Committee, Town of Montclair on, V 442-443; Frederick A. Potter on, V 526
(see also, *Veterans, Preference*)
- VETERANS, DISABLED, PREFERENCE, John Bill on, III 146-148
- VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY, Charles Becker presents recommendations of, to Committee on Rights, etc., on privileges and preferences for veterans, III 143-146, presents views of, to Committee on the Legislative on gambling and bingo, III 752-755, to Committee on Executive, etc., on militia, V 399-401, to Committee on Taxation and Finance, on tax exemption for veterans, V 676-680; resolution to Committee on Rights, etc., on preferences, privileges and exemptions of veterans, III 456-457; resolution to Committee on the Legislative, on gambling, III 490-491; Ben Thomas presents views of, to Committee on Executive, etc., on militia, V 359-364
- VETERANS, PREFERENCE, Charles Becker on, III 143-146; Charles Sullivan on, III 155-156; Committee on Rights, etc., defers action on provision for, III 192
- VETERANS, PRIVILEGES (see *Veterans, Preference*)
- VETERANS, TAX EXEMPTION, Frank E. Walsh on, V 539-541; Aaron K. Neeld on, V 541-542; Alvin A. Burger on, V 543; Robert C. Hendrickson on, V 599-609; J. H. Thayer Martin on, V 610-619; Joseph H. Edgar on, V 656-664; Alexander F. Ormsby on, V 664-673; William H. Falcey on, V 673-676; Charles Becker on, V 676-680; John W. Bill on, V 681-685; resolution of American Veterans of World War II, Department of N. J., V 836; letter of Colonia Post 248, American Legion, on, V 835; resolution of Jewish War Veterans of the United States, N. J. State Department, on, V 849
- VETO, Committee on the Legislative recommends action on provision to provide automatic session after adjournment to consider vetoed bills, III 496-497; Governor Alfred E. Driscoll on, V 29-46; Harold G. Hoffman on, V 46-58; Committee on Executive, etc., votes provision for, V 60-61; A. Harry Moore on, V 62-73
(see also, *Governor, Veto Power; and Legislature, Sessions, Special*)
- VETO, APPROPRIATION BILL, Morgan F. Larson on, V 3-28; Committee on Executive, etc., votes provision for, V 328-331
- VETO, POCKET, Morgan F. Larson on, V 3-28; Governor Alfred E. Driscoll on, V 29-46; Committee on Executive, etc., votes provision for elimination of, V 403
- VICE-CHANCELLORS, Chancellor A. Dayton Oliphant on, IV 396-415; Howard Ewart on, IV 454-460, 521-525; John Henry Reiners, Jr. on, IV 471-485; Weidner Titzck on, IV 471-475
- VITRONE, ANTHONY, appearance before Committee on Rights, etc.; presents views of United Public Workers of the State of N. J. on collective bargaining and rights of labor, III 219-220
- VOGEL, RUDOLPH, JR., letter to Committee on the Legislative on legislators doing business with State or municipal government, III 486
- VOOHEES, HERBERT, appearance before Committee on Rights, etc.; presents views of N. J. Farm Bureau on amendment, III 262-264

VOTING, ABSENTEE, Committee on Rights, etc., discusses provision for, in Suffrage section, III 11, votes on provision for, III 163-164, 186, 203-204; Mrs. W. B. Heinz on, III 17-19; Mrs. Frank Fobert on, III 223-227; N. J. League of Women Voters on, III 356-361; N. J. Committee for Constitutional Revision, Committee on Research and Drafting, on, III 377-383

VOTING AGE, Committee on Rights, etc., discusses, III 11-12; Mrs. W. B. Heinz on, III 17-19; Donald C. Blackburn on, III 19-20; E. R. Boucher on, III 20; Thomas Parsonnet on, III 231-243; Nat Brooks on, III 256-258; Walter Pollschuck on, III 258-259; N. J. League of Women Voters on, III 356-361; Douglas H. MacNeil on, III 370-372; N. J. American Youth for Democracy on, III 375; N. J. State Federation of Labor on, III 423-425; George Wilson on, III 460-461

VOTING, COUNTY RESIDENCE, Mrs. W. B. Heinz on, III 17-19

VOTING MACHINES, Committee on Submission and Address on use at Constitution referendum, V 979-980

VOTING, DISQUALIFICATION (see *Suffrage*)

VOTING, RESIDENCE REQUIREMENT (see *Suffrage*)

W

WAGNER, EMANUEL, appearance before Committee on the Judiciary; presents views of Legislative Committee of Union County Bar Association on retirement of judges and county courts, IV 513-514

WALSH, FRANK E., appearance before Committee on Taxation and Finance; presents views on assessment of property, taxation of railroads, exemption from taxation, veterans' exemptions, state finances, and State School Fund, V 539-541; presents views on State School Fund, and appropriations, V 591-596

WALSH, JOSEPH F., appearance before Committee on the Judiciary; discusses retirement age of judges, IV 525-526

WALSH, MAURICE A., JR., appearance before Committee on the Legislative; presents views of Catholic War Veterans, Post No. 758, on gambling, III 559-560

WALTON, GEORGE H., member, Committee on Executive, etc., V iii

WATSON, RUSSELL E., appearance before Committee on the Judiciary; discusses appeals, unified court, tenure and pensions for judges, prerogative writs, rule-making power of courts, and administration of courts, IV 150-163; appearance before Committee on Taxation and Finance; presents views of Trustees of Rutgers University on tax exemption for educational institutions, V 733-737; appearance before Committee on Submission and Address; discusses what constitutes a part of the Constitution on submission, and the power of the Convention to submit alternate proposals, V 933-956

WELFARE, N. J. League for Women Voters on, III 356-361
(see also, *Relief, Public; State Aid*)

WENE, ELMER H., member, Committee on Taxation and Finance, V iii

WIDEMERE, THEODORE, appearance before Committee on the Legislative; presents views on home rule, III 758-759

WILLETTE, MRS. LENORE B., appearance before Committee on Rights, etc.; presents recommendations of N. J. League of Women Voters on discrimination and equal civil rights, III 42-43

WILLIAM SUMNER LEWIS POST NO. 222, letter to Committee on Rights, etc., on preferences, privileges and exemptions of veterans, and discrimination, III 458-459

WILSON, GEORGE, letter to Committee on Rights, etc., on voting at age 18, III 460-461

WINANS, JOHN, appearance before Committee on the Legislative; presents views of N. J. State Elks Association on gambling and bingo, III 748-751

WINNE, WALTER G., member, Committee on the Judiciary, IV iii

WITNESSES, no disqualification recommended because of failure to have par-

- ticular religious belief, III 5; suggested to Committee on Rights, etc., that no person be compelled to be, against self in any criminal case, III 8-9
- WOLKSTEIN, HARRY W., appearance before Committee on Taxation and Finance; presents views of N. J. Taxpayers Association and Building Contractors' Association of N. J. on Governor's fiscal control power, appropriations, single budget, dedication of funds, duties of fiscal officers, auditing, election of State Auditor by Legislature, state revenues, taxation, assessment of property, and intergovernmental relations, V 556-560
- WORSHIP, FREEDOM (see *Freedom of Worship*)
- WOMEN, LEGAL STATUS OF (see *Equal Rights*)
- WOMEN'S ALLIANCE FOR EQUAL STATUS, letter and memorandum to Committee on Rights, etc., on equal rights for women, III 462-464
- WOMEN'S RIGHTS (see *Equal Rights*)
- WRITS, Committee on Rights, etc., votes on separate section for, III 25
- WRITS, REVIEW (see *Prerogative Writs*)
- WURTS, WILLIAM H., appearance before Committee on the Judiciary; discusses plan of Bergen County Bar Association on unified court, appellate court, Chancery Court, county courts, justices of the peace, impeachment court, tenure of judges, and appeals, IV 265-273

Y

- YOUNG, DAVID, 3rd, member, Committee on Executive, etc., V iii
- YOUNG PROGRESSIVE CITIZENS OF AMERICA OF NEWARK, Walter Pollschuck presents views of, to Committee on Rights, etc., on amendment, civil rights, and voting age at 18, III 258-259
- YOUNG REPUBLICAN ORGANIZATION OF HUDSON COUNTY, Anthony DeFeore presents views of, to Committee on the Legislative, on gambling and bingo, III 751-752

Z

- ZINK, HOMER C., appearance before Committee on the Legislative, III 645; appearance before Committee on Taxation and Finance; presents views on assessment of property, state appropriations, single budget, and single fiscal year, V 535-539, on assessment of property, credit of State, municipal finances, appropriations, debt, and State School Fund, V 584-596, on tax clause, assessment of property, exemptions, classification of property, taxation, V 723-727; on taxation, assessment of property, true value, classification of property, and taxation of railroads, V 818-824
- ZONING, Curtis C. Colwell on, for counties, III 499-508, on, III 682-685; Ernest G. Fifield on, III 537-549; Scott Bagley on, III 541-543; Robert C. Hendrickson on, III 592-613; Robert L. Copsey on, for airports, III 635-636; John W. Griggs on, for counties, III 636-638, for airports, III 636-638; Committee on the Legislative votes on provision for, III 651, 658; Dr. Thomas Reed on, III 712-726; Charles Handler on, III 732-738; resolution of Association of Chosen Freeholders of N. J., to Committee on the Legislative, on county, III 800-801; proposals of Montclair Planning Board on, III 860-863; letter and proposals of N. J. Federation of Official Planning Boards on, III 880-882
- ZWEMER, MRS. RICHARD, appearance before Committee on Rights, etc.; presents views of Consumers' League of N. J. on equal rights for women, III 74-76

STATEMENT OF THE COMMITTEE ON RULES, ORGANIZATION AND BUSINESS AFFAIRS OF THE CONSTITUTIONAL CONVENTION¹

The Delegates to the Constitutional Convention, in their closing session on September 8, 1947, voted that there be printed the Proceedings of the Constitutional Convention and of the Standing Committees. These five volumes constitute the carrying out of the directive.

In the same resolution, the Secretary of the Convention was directed to prepare and publish a Journal of the Convention. The material for such a Journal is included in Volumes I and II of these Proceedings.

With the publication of this final volume of the Proceedings, the Committee on Rules, Organization and Business Affairs of the Constitutional Convention has completed the assignment given it.

The Committee on Rules, Organization and
Business Affairs of the Constitutional Convention

ARTHUR R. GEMBERLING, SR., *Chairman*

MARION CONSTANTINE

JOSEPH W. COWGILL

W. A. DWYER

WINSTON PAUL

PAULINE H. PETERSON

H. RIVINGTON PYNE

October 1952

¹ Editors' note: The Committee on Rules, Organization and Business Affairs of the Constitutional Convention was directed, by resolution of the Convention, to take charge of any details required to close out the work of the Convention, and thus became responsible for the publication of these volumes.

ERRATA

- (1) Volume III, page 28: Footnote 1 states that the proposal of Winston Paul appears in the Appendix. It was omitted. However, the formal Proposals introduced by Mr. Paul (Nos. 17 and 18 on Amendments) appear on pages 1003 to 1005 of Volume II
- (2) Volume III, page 194: Proposal No. 7, submitted by Mr. Paul, should read: Proposal No. 17. . . .
- (3) Volume III, pages 499 to 508 and 682 to 685: The name "Curtis C. Caldwell" should read "Curtis C. *Colwell*"
- (4) Volume IV, page 204, under second statement by Mr. Brennan, paragraph 2, first line, should read "I think the Board feels it is preferable not to have the Constitu. . . ."

—*The Editors*

